CHAPTER 235
INCOME TAX LAW

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Law Journals and Reviews

Taxes in Hawaii Since July 1, 1968: A Report on the Unreported Decisions of Judge Dick Yin Wong. Arthur B. Reinwald, 9 HBJ 95.
Taxes in Hawaii 1983-1988: A Funny Thing Happened at the Forum. 22 HBJ 53.

Cross References

Civil relief for state military forces, see chapter 657D.

PART I. GENERAL PROVISIONS

§235-1 Definitions.

"Blind" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees. The impairment of sight shall be certified to on forms prescribed by the department of taxation on the basis of a written report on an examination performed by a qualified ophthalmologist or qualified optometrist.

"Corporation" means the same as in the Internal Revenue Code. A "domestic corporation" is one organized under the laws of the State. A "foreign corporation" is any other corporation.

"Deaf" means a person whose average loss in the speech frequencies (500-2000 Hertz) in the better ear is eighty-two decibels, A.S.A., or worse. The impairment of deafness shall be certified to by a qualified otolaryngologist on forms prescribed by the department of taxation.

"Dividend" means any distribution by a corporation to its shareholders or holders on an interest therein which is treated as a dividend by the Internal Revenue Code.

"Employee" means the same as in the Internal Revenue Code.

"Fiduciary" means the same as in the Internal Revenue Code.

"Fiscal year" means the same as in the Internal Revenue Code.

"Gross income", "adjusted gross income", "ordinary income", "ordinary loss", and "taxable income" respectively mean the same as gross income, adjusted gross income, ordinary income, ordinary loss, and taxable income as defined and determined under the Internal Revenue Code, except as otherwise provided in this chapter.

"Head of household" means any individual who qualifies as a head of household under the Internal Revenue Code.

"Husband and wife" means the same as in the Internal Revenue Code.

"Income tax law of 1901" means the income tax law enacted by Act 20 of the Session Laws of 1901 as it read from time to time prior to the enactment of the income tax law of 1932.

"Income tax law of 1932" means the income tax law enacted by Act 44 of the Second Special Session Laws of 1932, as it read from time to time prior to the enactment of the income tax law of 1957.

"Income tax law of 1957" means the income tax law enacted by the Twenty-Ninth Legislature, as it reads from time to time.

"Includes" and "including" when used in a definition shall not be deemed to exclude other things otherwise within the meaning of the term defined.

"Individual" means a person other than a trust, estate, partnership, or corporation, as defined.

"Internal Revenue Code of 1954, as amended" includes the Internal Revenue Code of 1986 and the Internal Revenue Code of 1986, as amended.

"Nonresident" means every individual other than a resident.

"Nonresident estate" or "nonresident trust" means one other than resident.

"Paid or incurred, paid or accrued" means the same as in the Internal Revenue Code.

"Partnership" means the same as in the Internal Revenue Code.

"Person" includes an individual, a trust, estate, partnership, association, company, or corporation.

"Person totally disabled" means a person who is totally and permanently disabled, either physically or mentally, which results in the person's inability to engage in any substantial gainful business or occupation.

The disability shall be certified to by (1) a physician licensed under chapter 453 or 460, or both, (2) a qualified out-of-state physician who is currently licensed to practice in the state in which the physician resides, or (3) a commissioned medical officer in the United States Army, Navy, Marine Corps, or Public Health Service, engaged in the discharge of one's official duty. Certification shall be on forms prescribed by the department of taxation.

"Prepaid legal service plan" ("Plan") means a group legal service plan in which the cost of the services are prepaid by the group member or by some other person or organization in the member's behalf. A group legal service plan is a plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest. A plan shall provide:

(A) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under such plan.

(B) For the payment of equal amounts for the cost of services rendered without regard to the identity of the attorney or attorneys selected by the plan member or members. No plan shall otherwise discriminate on the basis of such selection.

"Regulated investment company" means a corporation which qualifies as such under sections 851 and 852 of the Internal Revenue Code.

"Resident" means (1) every individual domiciled in the State, and (2) every other individual whether domiciled in the State or not, who resides in the State. To "reside" in the State means to be in the State for other than a temporary or transitory purpose. Every individual who is in the State more than two hundred days of the taxable year in the aggregate shall be presumed to be a resident of the State. This presumption may be overcome by evidence satisfactory to the department of taxation that the individual maintains a permanent place of abode outside of the State and is in the State for a temporary or transitory purpose. No person shall be deemed to have gained or lost a residence simply because of the person's presence or absence in compliance with military or naval orders of the United States, or while engaged in aviation or navigation, or while a student at any institution of learning.

"Resident estate" means an estate of a resident decedent the fiduciary of which was appointed by a court of this State and the administration of which is carried on in this State, and"resident trust" means a trust of which the fiduciary is a resident of the State or the administration of which is carried on in the State.

"Shareholder" means the same as in the Internal Revenue Code.

"Stock" means the same as in the Internal Revenue Code.

"Taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which income is computed under this chapter. "Taxable year" includes, in the case of a return made for a fractional part of a year under this chapter or under regulations prescribed by the department of taxation, the period for which such return is made, and in cases where the department terminates the taxable year in accordance with section 231-24 and levies a

jeopardy assessment on income for such portion or period of a year under section 235-109, then the period or portion of the year for which the jeopardy assessment is made.

"Taxpayer" means a persons subject to a tax imposed by this chapter.

"Trade or business" includes the performance of the functions of a public office.

"Uniformed services of the United States" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, and all regular and reserve components thereof, including the National Guard. The term "uniformed services of the United States" applies only to persons who are deemed members thereof under the laws of the United States relating to pay and allowances. Services as a member of the uniformed services includes inactive duty training.

"Without regard to source in the State" shall mean income derived or earned from all sources whether from sources located within or from sources located without the State. [L Sp 1957, c 1, pt of §2; am L 1959, c 246, §13 and c 277, pt of §6; am L Sp 1959 2d, c 1, §§16, 19; Supp, §121-1; am L 1967, c 250, §2; HRS §235-1; am L 1968, c 42, §3; am L 1970, c 90, §1; am L 1971, c 97, §1; am L 1973, c 217, §10; am L 1974, c 42, §2; am L 1976, c 156, §5 and c 208, §1; am L 1978, c 173, §§2(3), (4), and (5); am imp L 1984, c 90, §1; gen ch 1985; am L 1987, c 239, §1(4); am L 1988, c 81, §1; am L 1990, c 17, §1]

Attorney General Opinions

"Resident" clarified. Att. Gen. Op. 65-5.

Case Notes

Redemption of stock taxable as gain or profit held not dividend. 79 F.2d 761.
"Taxable year", 33 H. 766.
Abandonment of Hawaiian domicile and acquisition of new. 51 H. 339, 461 P.2d 131.

§235-2 Same; "Internal Revenue Code". "Internal Revenue Code" means the Internal Revenue Code of 1954 as it applies to the determination of gross income, adjusted gross income, and taxable income, except those provisions of the Internal Revenue Code which pursuant to this chapter do not apply. For each taxable year specified in column 1 below the Internal Revenue Code meant is the Internal Revenue Code of 1954 as amended as of June 7, 1957 and as further amended by the acts of Congress, or portions thereof, enumerated in column 2 (section numbers in column 2 are inclusive). Amendments to the Code not herein enumerated shall not be operative for the purposes of this chapter unless specifically adopted.

Column 1	Column 2
Taxable year beginning on or after January 1, 1958, or which in whole or in part is governed by this chapter pursuant to the provisions of Act 1 of the Special Session Laws of 1957, and subsequent taxable years.	Public Laws 85-165, 85-320, and 85-367; Public Law 85-866, Title I, sections 4-12, 19, 20 (with respect to sales, exchanges, and distributions made after December 31, 1957), 21, 22, 24, 25, 28, 29 (the provisions of section 29 being applicable as agreed upon in connection with the consent of the department of taxation to the change in the method of accounting, and reading "the first taxable year beginning after December 31, 1953, and ending after August 16, 1954" as "the first taxable year governed by the Income Tax Law of 1957"), 34, 35, 37(c), 38, 43-48, 52(b), 53, 55, 95, and 97.
Taxable year beginning on or after January 1, 1959, or beginning in 1958 but ending on or after June 30, 1959, and subsequent taxable years.	Public Law 85-866, Title I, sections 2 (with respect to obligations acquired after December 31, 1957), 3 (with respect to amounts received as a statutory subsistence allowance for a period after September 30, 1958), 13, 15 (with respect to the costs and improvements there designated), 17, 23, 26, 27, 30 (the provisions of section 30 being applicable to the extent they relate to deductions for contributions and gifts), 37(b) and (d), 39, 49, 50, 51, 52(a), 54, 57(a), 58 (with respect to the amounts there designated), 101 (with respect to taxable years of regulated investment companies beginning on or after March 1, 1958), Title II, sections 202, 204 (with respect to property acquired by purchase after December 31, 1958).
Taxable year beginning on or after January 1, 1961, and subsequent taxable years.	Public Law 86-564, Title III, section 302.

Taxable year beginning on or after January 1, 1962, and subsequent taxable years.	Public Law 87-834, sections 22 and 28.
Taxable years ending after December 31, 1962, but only in respect of periods after December 31, 1962.	Public Law 87-834, section 4.
Taxable year beginning on or after January 1, 1963, and subsequent taxable years.	Public Law 87-834, sections 13 and 21; Public Law 87-863, section 2.
Taxable year beginning on or after January 1, 1965.	Public Law 86-376, section 1(a); Public Law 86-470, section 3 (a); Public Law 86-594, section 1; Public Law 86-779, sections 6(a), (b), and (c), 7(a) and (b); Public Law 87-256, section 110(a); Public Law 87-834, section 3(a); Public Law 87-858, section 2(a) and (b); Public Law 87-863, section 1(a) and (b); Public Law 88-4, section 1; Public Law 88-272, sections 203(d) (with respect to dispositions of elevators and escalators made in taxable years beginning on or after January 1, 1965), 204(a) (with respect to group-term life insurance provided in taxable years beginning on or after January 1, 1965), 205(a) (with respect to amounts attributable to periods of absence beginning on or after January 1, 1965), 206(a) and (b)(2)(3) and (4) (with respect to sales on or after January 1, 1965), 207(a), (b)(1)(2)(3), and (c)(2), 208(a) (with respect to losses sustained in taxable years beginning on or after January 1, 1965), 211(a), 212(a), 213(a) and (b) (with respect to expenses incurred in taxable years beginning on or after January 1, 1965), 217(a), 224(a), (b), and (c) (with respect to certain deferred payments on sales or exchanges of property occurring in taxable years beginning on or after January 1, 1965), 230(a) and (b) (with respect to capital loss carryovers in taxable years beginning on or after January 1, 1965, and further provided that in the case of a taxpayer other than a corporation, there shall be treated as a short-term capital loss in the first taxable year beginning after December 31, 1964, any amount which is treated as a short-term capital loss in such year as in effect immediately before May 11, 1965), 231(a) and (b) (with respect to dispositions of certain depreciable realty in taxable years beginning on or after January 1, 1965).
Taxable years ending after December 31, 1965, but only with respect to compensation for periods of active service after such date.	Public Law 88-554, section 1; Internal Revenue Code of 1954, section 112, as amended by Public Law 89-739.
Taxable years ending after December 31, 1966, but only with respect to contributions made after such date.	Public Law 88-272, section 209, with the exceptions of section 209(c)(2) and section 209(f).
Taxable years beginning January 1, 1967.	Public Law 90-78, section 1.
Taxable year beginning on or after January 1, 1968.	Public Law 87-792, sections 2, 3, 4, 6, 7(b), 7(c), 7(d), 7(e) and 7(f); Public Law 87-863, subsections 2(a) and (b); Public Law 89-809, sections 204 and 205; Public Law 87-792, section 5.

Taxable years beginning on or after January 1, 1966.	Internal Revenue Code, section 112(d), as added by Public Law 92-279.
Taxable years beginning on or after January 1, 1975.	Public Law 91-172, sections 201(a)(1), (a)(2)(A), (b), (c), (e) and (f) (with respect to charitable contributions made on or after January 1, 1975), 212(a)(1), (a)(2), (b)(1), and (c)(1) (with respect to recapture of depreciation upon the sale of livestock made on or after January 1, 1975), 213(a), (b), and (c) (with respect to deductions attributable to activities not engaged in for profit made on or after January 1, 1975), 231(a), (b), and (c) (with respect to moving expenses made on or after January 1, 1975), 321(a), (b), and (c) (with respect to restricted property made on or after January 1, 1975), 331(a), (b), and (c) (with respect to treatment of excess distributions by trusts made on or after January 1, 1975), 411(a) and (b) (with respect to interest on indebtedness incurred by corporation to acquire stock or assets of another corporation made on or after January 1, 1975), 412(a) (with respect to installment sale made on or after January 1, 1975), 421(a) (with respect to stock dividends made on or after January 1, 1975), 433(b) (with respect to loss of a small business investment company made on or after January 1, 1975), 441(a) (with respect to public utility property made on or after January 1, 1975), 442(a) (with respect to earnings and profits made on or after January 1, 1975), 513(a), (b), and (c) (with respect to capital loss limitations for individuals), 514(a) and (b) (with respect to income on sales of literary property), 515(a), (b) and (c)(1), (c)(2) and (c)(3) (with respect to lump-sum distribution from employees' plans), 516(a) (with respect to sales or other disposition of a term interest in property), 516(b) (with respect to treatment of certain casualty losses), 516(c) (with respect to treatment of franchises, trademarks and trade names), 521(a) through (f) (with respect to real estate depreciation and recapture effective on or after January 1, 1975), 531(a), (b) and (c) (with respect to qualified pension, etc., plans of small business corporation effective on or after January 1, 1975), 901(a) and (b) (with respect to casualty losses—reimbursement for increased living expenses), 902(a) and (b) (with respect to fines and penalties, and bribes and illegal kickbacks), 905(a) and (b) (with respect to corporations using appreciated property to redeem their own stock), 910(a), (b) and (c) (with respect to sales of certain low-income housing projects in Hawaii), 912(a) (with respect to foster child as dependent), 915(a) (with respect to replacement of property involuntarily converted within a 2-year period.) Public Law 92-178, sections 109(a), (b), (d)(1)(2), and (e) (with respect to class life system of depreciation effective on or after January 1, 1975), 302(a) and (b) with the exceptions of unused credits (with respect to limitations on carryovers of unused capital losses), 303(a) and (c) (with respect to amortization of certain expenditures for on-the-job training and for child care centers), 306(a) and (b) (with respect to capital gain distributions of certain trusts), 310(a) (with respect to bribes, kickbacks, medical referral payments), and 311(a) (with respect to activities not engaged in for profit).

[L 1959, c 277, pt of §6; am L Sp 1959 2d, c 1, §16; am L 1963, c 146, §1; am L 1965, c 57, §1; Supp, §121-1.01; am L 1967, c 25, §2, c 117, §1 and c 182, §2; HRS §235-2; am L 1968, c 47, §2; am L 1969, c 66, §2; am L 1973, c 21, §1; am L 1975, c 86, §1]

Case Notes

Cited re deprecation deductions. 56 H. 644, 547 P.2d 1343.

§235-2.1 Internal Revenue Code, further amendments adopted. For each taxable year specified in column 1 below the Internal Revenue Code meant is the Internal Revenue Code of 1954 as amended as of June 7, 1957, and as further amended by the acts of Congress, or portions thereof, enumerated in column 2 (section numbers in column 2 are inclusive). Amendments to the Code not enumerated in section 235-2 or herein shall not be operative for the purposes of this chapter unless specifically adopted.

Column 1	Column 2
Taxable years beginning on or after January 1, 1976.	Public Law 93-406, sections 2001(a), (b), (c); 2002(a), (b), (c), (f), (g)(5) and (6).

[L 1976, c 218, §2 and c 222, §2; am L 1977, c 196, §3]

§235-2.2 Internal Revenue Code, further amendments adopted. For each taxable year specified in column 1 below, the Internal Revenue Code meant is the Internal Revenue Code of 1954 as amended as of June 7, 1957 and as further amended by the acts of Congress, or portions thereof, enumerated in column 2 (section numbers in column 2 are inclusive). Amendments to the Code not enumerated in section 235-2, 235-2.1, or herein shall not be operative for the purposes of this chapter unless specifically adopted.

Column 1	Column 2
Taxable years beginning on or after January 1, 1977.	Public Law 629, 84th Cong., 2d Session, section 5(a) (with respect to nontaxable exchanges for taxable years beginning after December 31, 1976). Public Law 86-779, section 10(h) (with respect to constructive ownership of stock for taxable years beginning after December 31, 1976). Public Law 86-781, section 6(a) (with respect to limitation on acceleration of accrual of taxes for taxable years beginning after December 31, 1976). Public Law 87-876, section 3(a) (with respect to dividends or interest paid on certain deposits or withdrawable accounts for taxable years beginning after December 31, 1976). Public Law 88-272, sections 218(a) and (b) (with respect to corporate reorganizations for taxable years beginning after December 31, 1976) and 226(a) and (b) (with respect to treatment in case of oil and gas wells for taxable years beginning after December 31, 1976). Public Law 88-484, section 1(b) (1) and (2) (with respect to corporate distributions in taxable years beginning after December 31, 1976). Public Law 88-539, section 3(a) and (b) (with respect to the installment method of accounting for taxable years beginning after December 31, 1976). Public Law 88-554, section 4(a) (with respect to constructive ownership of stock for taxable years beginning after December 31, 1976). Public Law 88-563, section 5 (with respect to original issue discount for taxable years beginning after December 31, 1976). Public Law 89-97, sections 106(a), (b), (c), and (d)(1) (with respect to medical deductions for taxable years

beginning after December 31, 1976) and 313(b) (with respect to employee tips for taxable years beginning after December 31, 1976).

Public Law 89-570, section 1(b)(2) and (4) (with respect to corporate distributions in taxable years beginning after December 31, 1976).

Public Law 89-809, section 202(c) (with respect to methods of accounting for taxable years beginning after December 31, 1976).

Public Law 90-621, section 1(a) and (b) (with respect to corporate reorganizations for taxable years beginning after December 31, 1976).

Public Law 91-172, sections 211(a) and (b)(1) to (6) (with respect to gain from disposition of property used in farming where farm losses offset nonfarm income for taxable years beginning after December 31, 1976; provided that provisions relating to the excess deduction account shall not apply), 214(a) (with respect to gain from disposition of farm land for taxable years beginning after December 31, 1976), 215(a) (with respect to crop insurance proceeds for taxable years beginning after December 31, 1976), 216(a) (with respect to capitalization of costs of planting and developing citrus groves for taxable years beginning after December 31, 1976), 221(a) (with respect to limitation on interest deduction attributable to investment indebtedness for taxable years beginning after December 31, 1976), 413(a) and (b) (with respect to bonds and other evidences of indebtedness for taxable years beginning after December 31, 1976), 511(a) (with respect to definition of terms applicable to capital gains and losses for taxable years beginning after December 31, 1976), 802(b)(1) and (2) (with respect to the determination of marital status for taxable years beginning after December 31, 1976), and 916(a) (with respect to methods of accounting for taxable years beginning after December 31, 1976).

Public Law 91-680, section 1(a) (with respect to capitalization of costs of planting and developing almond groves for taxable years beginning after December 31, 1976).

Public Law 91-687, section 1 (with respect to determining when stock of a corporation shall not be treated as a capital asset for taxable years beginning after December 31, 1976).

Public Law 91-693, section (a) and (b) (with respect to corporate reorganizations for taxable years beginning after December 31, 1976).

Public Law 92-178, sections 304(a)(2), (c), and (d) (with respect to excess investment interest for taxable years beginning after December 31, 1976) and 305(a) (with respect to farm losses of electing small business corporations for taxable years beginning after December 31, 1976; provided that provisions relating to the excess deduction account shall not apply).

Public Law 93-406, sections 1013(c)(2) (with respect to when certain contributions may be made for taxable years beginning after December 31, 1976) and 2004(a)(2) (with respect to limitations on benefits and contributions under qualified plans for taxable years beginning after December 31, 1976).

Public Law 93-483, sections 4 (with respect to application of section 117 of the Internal Revenue Code to certain educational programs for members of the uniformed services for taxable years beginning after December 31, 1976) and 6(a) (with respect to penalties forfeited because of premature withdrawal of funds from time-savings accounts or deposits for taxable years beginning after December 31, 1976).

Public Law 94-12, section 207 (with respect to extension of period for replacing old residence for purpose of nonrecognition of gain for taxable years beginning after December 31, 1976).

Public Law 94-267, sections (a)(1), (2), and (3) and (b)(1), (2), and (3) (with respect to termination of employee trusts and annuity plans for taxable years beginning after December 31, 1976).

Public Law 94-455, sections 201(a) (with respect to the capitalization and amortization of real property construction period interest and taxes, in the case of (1) nonresidential real property, for taxable years beginning after December 31, 1976, (2) residential real property, other than low-income housing, for taxable years beginning after December 31, 1977, and (3) low-income housing, for taxable years beginning after December 31, 1981; provided that the transitional rule for 1976 (section 189(f) of the Internal Revenue Code as added by section 201(a) shall not apply)), 202(a), (b), and (c) (with respect to the recapture of depreciation on real property for taxable years beginning after December 31, 1976; provided that section 202(b) shall apply with respect to proceedings and operations of law referred to in section 1250(d)(10) of the Internal Revenue Code which begins after December 31, 1976), 203(a) (with respect to the depreciation of expenditures to rehabilitate low-income rental housing for taxable years beginning after December 31, 1976; provided that (1) section 167(k) of the Internal Revenue Code as adopted by this State is amended by striking out "January 1, 1975" in paragraph (1) and inserting in lieu thereof "January 1, 1978", (2) the amendments made by section 203(a)(1), (3), and (4) shall apply to expenditures paid or incurred after December 31, 1976, and before January 1, 1978, and expenditures made pursuant to a binding contract entered into before January 1, 1978, and (3) the amendment made by section 203(a)(2) shall apply to expenditures incurred after December 31, 1976), 204(a) and (c)(2) and (3)(A) and (B) (with respect to limitations on deductions for expenses for taxable years beginning after December 31, 1976; provided that the amendments made by section 204(a) shall apply to losses attributable to amounts paid or incurred in taxable years beginning after December 31, 1976, and for this purpose, any amount allowed or allowable for depreciation or amortization for any period shall be treated as an amount paid or incurred in such period; provided further that as adopted by this State (1) the date September 11, 1975, in section 204(c)(2)(A) shall read January 1, 1977, (2) the dates December 31, 1975, and September 10, 1975, respectively, in section 204(c)(2)(B) shall read December 31, 1976 and January 1, 1977, respectively, (3) the date January 1, 1976 in

section 204(c)(3)(A) shall read January 1, 1977, (4) the date December 31, 1975 in section 204(c)(3)(B) shall read December 31, 1976, and (5) the dates contained in section 204(c)(3)(C) shall be disregarded), 205(a), (b), and (c) (with respect to gain from the disposition of interest in oil or gas property for taxable years beginning after December 31, 1976; provided that section 1254 of the Internal Revenue Code as adopted by this State is amended by striking out "December 31, 1975" therein and inserting in lieu thereof "December 31, 1976"), 206(a) and (b) (with respect to gain from disposition of property used in farming where farm losses offset nonfarm income for taxable years beginning after December 31, 1976; provided that the adoption of section 206(a) shall not result in application of the excess deduction account for taxable years beginning before January 1, 1977), 207(a)(1), (b)(1) and (2) and (c)(1)(A), and (c)(3) (with respect to limitations on deductions in case of farming syndicates; capitalization of certain orchard and vineyard expenses; and method of accounting for corporations engaged in farming for taxable years beginning after December 31, 1976), 208(a) (with respect to prepaid interest for taxable years beginning after December 31, 1976), 209(a) and (b)(2) (with respect to limitation on interest deduction for taxable years beginning after December 31, 1976, except where otherwise provided in section 209(b)(2); provided that as adopted by this State
(1) the date "September 11, 1975" in section 209(b)(2) shall read "January 1, 1977", and (2) the date "September 10, 1975" in section 209(b)(2) shall read "December 31, 1976"), 210(a) (with respect to amortization of motion pictures, books, records, and other similar property for taxable years beginning after December 31, 1976), 212(a)(1) and (b)(1) (with respect to basis limitation for and recapture of depreciation on player contracts for taxable years beginning after December 31, 1976), 213(a) (with respect to dollar limitations in the case of partnerships with respect to additional first-year depreciation allowance for taxable years beginning after December 31, 1976), (b)(1) and (3) (with respect to treatment of organization and syndication fees for taxable years after December 31, 1976), (c)(1) and (2) (with respect to allocation of partnership income and losses for taxable years beginning after December 31, 1976), (d) (with respect to determination of partner's distributive shares for taxable years beginning after December 31, 1976), and (e) (with respect to treatment of partnership liabilities with respect to which the partner is not personally liable for taxable years beginning after December 31, 1976), 214(a) (with respect to scope of waiver of statute of limitations in case of activities not engaged in for profit for taxable years beginning after December 31, 1976), 502(a) (with respect to deductions for alimony allowed in determining adjusted gross income for taxable years beginning after December 31, 1976), 506(a), (b), and (c) (with respect to moving expenses for taxable years beginning after December 31, 1976), 601(a) (with respect to deductions for expenses attributable to business use of home, rental of vacation homes, etc., for taxable years beginning after December 31, 1976), 602(a)

(with respect to deductions for attending conventions for taxable years beginning after December 31, 1976), 605(a) (with respect to deductions for guarantees of business bad debts to guarantors not involved in business for taxable years beginning after December 31, 1976), 701(a)(2) and (3), (b), (c), (d), and (e)(2) (with respect to accumulation trusts for taxable years beginning after December 31, 1976; provided that the reference in section 668 of the Internal Revenue Code to section 667 of the Internal Revenue Code shall be deemed a reference to section 235-58.1 relating to the treatment of amounts deemed distributed by trust in preceding years and the reference in section 641 of the Internal Revenue Code to section 644(b) of the Internal Revenue Code shall be deemed a reference to section 235-58.2(b) relating to the special rule for gain on property transferred to trusts at less than fair market value), 806(e), (f), as to special limitations on capital losses, and (g)(2) (with respect to limitations on net operating loss carryovers and capital losses effective for taxable years as provided in sections 806(g)(2)), 1401(a) and (b) (with respect to amounts of ordinary income against which capital loss may be offset for taxable years beginning after December 31, 1976), 1402(a), (b), (c), and (d) (with respect to increases in holding period required for capital gain or loss to be long term for six to nine months for taxable years beginning after December 31, 1976, and from nine months to one year for taxable years beginning after December 31, 1977), 1404(a) (with respect to sales of residences by elders for taxable years beginning after December 31, 1976), 1501(a) and (b)(1) to (6) and (10) (with respect to retirement savings for certain married individuals for taxable years beginning after December 31, 1976), 1502(a)(1) and (2) (with respect to limitations on contributions to certain pension, etc., plans for taxable years beginning after December 31, 1976), 1503(a) (with respect to participation by members of reserves or national guard, and volunteer firefighters in individual retirement accounts, etc., for taxable years beginning after December 31, 1976), 1901(a)(22) (with respect to determination of marital status for taxable years beginning after December 31, 1976), (a)(66) (with respect to accounting methods for taxable years beginning after December 31, 1976), (a)(87) (with respect to the definition of property for taxable years beginning after December 31, 1976), (a)(128) (with respect to involuntary conversion for taxable years beginning after December 31, 1976), and (a)(136) (with respect to definition of terms applicable to capital gains and losses for taxable years beginning after December 31, 1976), and (b) (3)(I) (with respect to taxable years beginning after December 31, 1976), and (b)(3)(K) (with respect to ordinary income for taxable years beginning after December 31, 1976; provided that provisions relating to the excess deduction account shall not apply), and (b)(14)(D) (with respect to taxable years beginning after December 31, 1976), 1904(b) (10)(C) (with respect to taxable years beginning after January 31, 1977), 1951(b)(7) (with respect to accounting methods for taxable years beginning after December 31, 1976; provided that notwithstanding the amendment made by section 1951(b)(7), in the case of installment payments

received during taxable years beginning after December 31, 1976, on account of a sale or other disposition made during a taxable year beginning before January 1, 1954, subsection (b)(1) of section 453 of the Internal Revenue Code (relating to sales of realty and casual sales of personalty) shall apply only if the income was (by reason of section 44(b) of the Internal Revenue Code of 1939) returnable on the basis and in the manner prescribed in section 44(a) of the Internal Revenue Code of 1939), 2004(e) (with respect to requirements for capital gain on stock redemptions to pay estate taxes for taxable years beginning after December 31, 1976; provided that the references in section 303(b)(1) of the Internal Revenue Code to the time limits in sections 6213, 6501(a), 6166, and 6166A of the Internal Revenue Code or the election under sections 6166 and 6166A of the Internal Revenue Code shall be followed by the State even though the State has not adopted such sections), 2005(b) (with respect to the use of certain appreciated carryover basis property to satisfy pecuniary request for taxable years beginning after December 31, 1976), and (c) (with respect to increases in basis for gift tax paid to that portion of gift tax attributable to net appreciation in value for taxable years beginning after December 31, 1976), 2101(b) (with respect to allowances of depreciation deduction by a cooperative housing corporation for taxable years beginning after December 31, 1976), 2102(a) and (b) (with respect to treatment of certain disaster payments for taxable years beginning after December 31, 1976), 2104(a) (with respect to deductions for bad debts owed by a political party for taxable years beginning after December 31, 1976), 2110(a) (with respect to application of franchise rules to partnerships for taxable years beginning after December 31, 1976;

provided that the amendments made by section 2110(a) shall apply to transactions described in section 731, 736, 741, or 751 of the Internal Revenue Code which occur after December 31, 1976, in taxable years ending after that date), 2118(a) (with respect to treatment of gain or loss on sales or exchanges in connection with simultaneous liquidation of a parent or subsidiary corporation for taxable years beginning after December 31, 1976), 2122(a) and (b)(2), (3), and (4) (with respect to allowances of deduction for eliminating architectural and transportation barriers for the handicapped for taxable years beginning after December 31, 1976 and before January 1, 1980), 2124(a)(1), (2), and (3) (with respect to the rehabilitation of certified historic structures with respect to additions to capital accounts made after December 31, 1976, and before June 15, 1981), (b)(1) (with respect to demolition of certain historic structures commencing after December 31, 1976, and before January 1, 1981), (c)(1) (with respect to depreciation of rehabilitation expenditures of certified historical structures on that portion of the basis which is attributable to construction, reconstruction, or erection after December 31, 1976, and before January 1, 1981;

provided that section 167(n) of the Internal Revenue Code as adopted by this State is amended by striking out “June 30, 1976" and inserting in lieu thereof ”January 1, 1977"),

(d)(1) (with respect to depreciation of rehabilitation expenditures of certified historical structures with respect to additions to capital account occurring after December 31, 1976, and before July 1, 1981), and (e)(1) (with respect to deductions for charitable contributions of partial interests in property for conservation purposes with respect to contributions made after December 31, 1976, and before June 14, 1977), 2127(a) (with respect to outdoor advertising displays for taxable years beginning after December 31, 1976), 2129(a) (with respect to gain from sale of depreciable property between related parties for taxable years beginning after December 31, 1976; provided the amendments made by section 2129(a) shall apply to sales or exchanges after December 31, 1976; and provided that a sale or exchange is considered to have occurred on or before such date if such sale or exchange is made pursuant to a binding contract entered into on or before such date), 2130 (with respect to application of section 117 of the Internal Revenue Code to certain education programs for members of the uniformed services), 2131(a), (b), (c), (d), and (e)(1) (with respect to exchange fund transfers made in taxable years ending after December 31, 1976; provided that (1) except as provided

in (2) following, the amendment made by section 2131(a) shall apply to transfers made after December 31, 1976, in taxable years ending after such date; provided further that (2) the amendment made by section 2131(a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code; and (3) except as provided in (4) following, the amendments made by section 2131(b) and (c) shall apply to transfers made after December 31, 1976, in taxable years ending after such date; provided further that (4) the amendments made by section 2131(b) and (c) shall not apply to transfers made on or before January 2, 1977, if: (A) either (i) a ruling request with respect to such transfers was filed with the federal Internal Revenue Service before March 27, 1976, or (ii) a registration statement with respect to such transfers was filed with the federal Securities and Exchange Commission before March 27, 1976, (B) the securities transferred were deposited on or before December 3, 1976, and (C) either (i) the aggregate value (determined as of the close of December 3, 1976, or, if earlier, the close of the deposit period) of the securities so transferred does not exceed $100,000,000, or (ii) the securities transferred were all on deposit on February 29, 1976, pursuant to a registration statement referred to in (A)(ii) preceding; provided further that (5) if no registration statement was required to be filed with the federal Securities and Exchange Commission with respect to the transfer of securities to any partnership, then (4) preceding shall be applied to such transfers (A) as if (4) preceding did not contain (4)(A)(ii) preceding, and (B) by substituting "$25,000,000" for "$100,000,000" in (4)(C) (i) preceding; and provided further that (6) the amendments made by section 2131(d) and (e) shall take effect on January 1,

	1977, in taxable years ending on or after such date), 2132(A) (with respect to contributions of certain government publications for taxable years beginning after December 31, 1976), 2135(a) (with respect to charitable contributions of inventory and other property for taxable years beginning after December 31, 1976), 2136(a) (with respect to treatment of grantor of options of stock, securities, and commodities for taxable years beginning after December 31, 1976), 2139(a) (with respect to support test for dependent children of divorced, etc., parents for taxable years beginning after December 31, 1976), 2140(a) (with respect to involuntary conversions of real property for taxable years beginning after December 31, 1976; provided that the amendments made by section 2140(a) shall apply with respect to any disposition of converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code) after December 31, 1976, unless a condemnation proceeding with respect to such property began before such effective date), and 2141(a) (with respect to livestock sold on account of drought for taxable years beginning after December 31, 1976).
For taxable years beginning on or after January 1, 1978.	Public Law 94-455, section 505(a) and (b) (with respect to changes in exclusions for sick pay and certain military, etc., disability pensions; certain disability income for taxable years beginning after December 31, 1977; provided that where disability or annuity payments are excluded from taxation by section 235-7 the adoption of section 505(a) and (b) shall not make such payments taxable under this chapter).

[L 1977, c 47, §2; am L 1981, c 3, §2(1); am L 1990, c 67, §8]

Note

Section 235-58.1 and 235-58.2 referred to in text are repealed.

§235-2.3 Conformance to the federal Internal Revenue Code; general application. (a) For all taxable years beginning after December 31, 1995, as used in this chapter "Internal Revenue Code" means the Internal Revenue Code of 1986 as amended as of December 31, 1995. Chapter 1 of the Internal Revenue Code is made operative for purposes of this chapter as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal public laws which pursuant to this chapter do not apply or are otherwise limited in application.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine (1) the basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978, and (2) gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.

(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

(1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 42 (with respect to the low-income housing credit) and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.7 and 235-110.8.
(2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit).
(3) Section 86 (with respect to social security and tier 1 railroad retirement benefits).
(4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b).
(5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11).

(6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).
(7) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1).
(8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds).
(9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
(10) Section 196 (with respect to deduction for certain unused investment credits).
(11) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c).
(12) Section 280C (with respect to certain expenses for which credits are allowable).
(13) Section 291 (with respect to special rules relating to corporate preference items).
(14) Section 367 (with respect to foreign corporations).
(15) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
(16) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
(17) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
(18) Subchapter H (sections 581 to 597) (with respect to banking institutions). For treatment, see chapter 241.
(19) Section 642(a), and (b) (with respect to special rules for credits and deductions applicable to trusts. For treatment, see sections 235-54(b) and 235-55.
(20) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
(21) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204.
(22) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
(23) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, 235-7(b), and 235-55.
(24) Section 1055 (with respect to redeemable ground rents).
(25) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
(26) Sections 1291 to 1297 (with respect to treatment of passive foreign investment companies).
(27) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).
(28) Subchapter U (sections 1391 to 1397D) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E. [L 1978, c 173, §2(1); am L 1979, c 62, §§2(1) to (3); am L 1980, c 235, §1 and c 238, §2; am L 1981, c 3, §2(2), c 208, §2, and c 209, §1; am L 1982, c 22, §1(1) and c 25, §1; am L 1983, c 88, §1; am L 1984, c 99, §1; am L 1985, c 19, pt of §1; am L 1986, c 283, §1; am L 1987, c 39, §2, and c 239, §1(5); am L 1988, c 10, §1(2), c 102, §1, c 107, §2, and c 216, §3; am L 1989, c 13, §1; am L 1990, c 15, §1 and c 289, §2; am L 1991, c 54, §1 and c 137, §2; am L 1992, c 37, §1; am L 1993, c 73, §1; am L 1994, c 13, §2; am L 1995, c 7, §1; am L 1996, c 187, §1]

Attorney General Opinions

Hawaii's net income tax law incorporates Internal Revenue Code of 1954, as amended, with certain exceptions, for purposes of determining gross income. Att. Gen. Op. 91-03.

Note

The 1995 amendment applies to taxable years beginning after December 31, 1994. L 1995, c 7, §3.

§235-2.4 Operation of certain Internal Revenue Code provisions. (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

(1) $1,900 in the case of:
  (A) A joint return as provided by section 235-93, or
  (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code),
(2) $1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code),
(3) $1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household, or
(4) $950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of $500 or such individual's earned income. Section 63(f) shall not be operative in this State.

(b) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

(c) In administering the provisions of sections 410 to 417(with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

(d) Section 468B (with respect to special rules for designated settlement funds) shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

(e) Section 469 (with respect to passive activities and credits limited) shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

(f) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction which is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.

(g) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

(h) Sections 527 (with respect to political organizations)and 528 (with respect to certain homeowners associations) shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

(i) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

(1) The deduction for exemptions shall be allowed as provided in section 235-54(b).

(2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State.

(3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

(j) Section 644 (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the determination of the interest rate established under section 6621 of the Internal Revenue Code referred to in section 644(a)(2) of the Internal Revenue Code shall instead be the interest rate established under section 231-39(b)(4).

(k) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

(l) Section 1034 (with respect to rollover of gain on sale of principal residence) of the Internal Revenue Code shall be operative for the purpose of this chapter; provided section 1034(a) (with respect to nonrecognition of gain) of the Internal Revenue Code shall apply only to:

(1) A taxpayer who purchases a replacement residence which is located within the State;
(2) A taxpayer who is a resident of the State, taxable upon the taxpayer's entire income, computed without regard to source within the State; or
(3) A taxpayer (or the taxpayer's spouse if the old residence and the new residence are each used by the taxpayer and the taxpayer's spouse as their principal residence) who, while serving on extended active duty with the armed forces of the United States, purchased a residence in Hawaii and later sold the residence.

(m) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a), shall be limited to five years.

(n) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

(o) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

(p) Subchapter D (sections 6241 to 6245) (with respect to tax treatment of subchapter S items) of the chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter, and shall be interpreted with due regard to part VII.

(q) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset which is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis. [L 1985, c 19, pt of §1; am L 1987, c 239, §1(6); am L 1989, c 13, §2 and c 321, §2; am L 1990, c 16, §2; am L 1991, c 207, §1; am L 1996, c 187, §2]

§235-2.5 Administration, adoption, and interrelationship of Internal Revenue Code and Public Laws with this chapter. (a) Reference in provisions of the Internal Revenue Code which are operative in this State to provisions in the Internal Revenue Code which are not operative in this State shall be considered inoperative for the purposes of determining gross income, adjusted gross income, ordinary income and loss, and taxable income; provided that:

(1) References to time limits and other administrative provisions in subtitle F (sections 6001 to 7873) of the Internal Revenue Code contained in operative sections of the Internal Revenue Code shall be deemed references to applicable provisions of this chapter or chapter 231 or 232, and in the absence of applicable provisions in this chapter or chapter 231 or 232, then to rules adopted by the director of taxation under subsection (b);
(2) If inoperative provisions of the Internal Revenue Code have been codified in this chapter such references shall be deemed references to the codified provisions in this chapter. Transitory and savings provisions in federal Public Laws amending sections of the Internal Revenue Code operative in this chapter shall be operative for the purposes of this chapter. Provisions in this chapter or chapter 231 or 232 in conflict with the Internal Revenue Code or transitory or savings provisions in federal Public Law shall control; and
(3) Retroactive provisions in federal Public Laws amending sections of the federal Internal Revenue Code operative in this chapter affecting taxable years beginning or ending before the December 31 date in section 235-2.3 shall be operative for the purposes of this chapter; provided that the effective dates in Public Law 96-471 placing it in effect for the taxable year 1980 shall be operative for the purposes of this chapter.

(b) The director of taxation may adopt by rule under chapter 91 the rules and regulations promulgated by the United States Secretary of Treasury or a delegate of the Secretary relating to the provisions of subtitle A, chapter 1 or 6, of the Internal Revenue Code operative in this chapter and any administrative provisions of the Internal Revenue Code (subtitle F, sections 6001 to 7873) not in conflict with or similar to provisions contained in this chapter or chapter 231 or 232 either by reference or by setting them forth in full.

(c) The department of taxation shall submit to each regular session of the legislature a bill to amend sections 235-2.3 and 235-2.4 and such other sections and subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on the December 31 preceding such regular session. In submitting the bill the department may provide that certain amendments to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or as operative are limited in their operation. The department shall also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions which are limited in their operation, or which are not recommended for operation, and shall submit with the bill required by this subsection the digest, explanation, and a statement of revenue impact of the adoption of such bill. In preparing the bill, digest, and explanation the department may request the assistance of the office of the legislative reference bureau.

It is the intent of the legislature that it shall each year adopt all amendments to the Internal Revenue Code for the calendar year preceding the year in which the legislature meets; provided that the legislature may choose to adopt none

of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation. [L 1985, c 19, pt of §1; am L 1988, c 102, §2; am L 1989, c 13, §3; am L 1996, c 187, §3]

§235-3 Legislative intent, how Internal Revenue Code shall apply, in general. (a) It is the intent of this chapter, in addition to the essential purpose of raising revenue, to conform the income tax law of the State as closely as may be with the Internal Revenue Code in order to simplify the filing of returns and minimize the taxpayer's burdens in complying with the income tax law. The rules and regulations, forms and procedures adopted and established under this chapter shall conform as nearly as possible, and unless there is good reason to the contrary, to the rules and regulations, forms and procedures adopted and established under the Internal Revenue Code.

(b) The Internal Revenue Code, so far as made operative by this chapter, is a statute adopted and incorporated by reference. The Internal Revenue Code shall be applied using changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effectuate the intent of this section. In the Internal Revenue Code, references to terms such as:

(1) "Secretary or his delegate" shall refer to the director of taxation and the director's duly authorized subordinates;

(2) "Estate taxes" shall refer to the estate and transfer tax imposed by chapter 236D;

(3) "The highest rate of tax imposed upon individuals" or "39.6 per cent" shall refer to the highest rate imposed upon individuals under section 235-51;

(4) "The highest rate of tax imposed upon corporations" shall refer to the highest rate imposed upon corporations under section 235-71; and

(5) "Interest at the underpayment rate" or "interest at the overpayment rate" shall refer to the interest rate set forth in section 231-39(b)(4) or section 231-23(d)(1), as the case may be.

(c) Where, under a provision of the Internal Revenue Code made operative in this chapter, the allowance or disallowance to a taxpayer of a deduction, exclusion, adjustment, credit, or exemption is dependent on whether, under the Internal Revenue Code or a prior applicable federal income tax law, the following was or was not, is or is not, in relation to the same taxpayer or another taxpayer, for the same taxable year or a prior taxable year, an operative factor: the imposition or payment of an income tax, an inclusion in gross income, an exclusion from gross income, or a deduction from gross income—the allowance or disallowance under this chapter of such deduction, exclusion, adjustment, credit, or exemption shall depend on the operativeness of such factor or factors under this chapter or a prior applicable income tax law of the State. This subsection shall govern the application of such sections of the Internal Revenue Code as, for example, sections 111, 215, 668(b), and 7852(c) and all matters of a similar nature.

(d) Whenever, in a taxable year of a corporation or its shareholders not governed by the income tax law of 1957, a distribution of money, stock, securities, or other property (whether in complete or partial liquidation or otherwise) has been made by a corporation to shareholders owning such shares in the State, or stock, securities, or other property has been transferred to a corporation, or corporate stock or securities exchanged, in the course of a corporate organization or reorganization effected under the laws of the State, in the application of the income tax law of 1957 effect shall be given to the recognition of income by the income tax laws of 1901 and 1932, if any, to the extent necessary to avoid double taxation, for example, in determining the earnings and profits of any corporation involved or the basis of any stock, securities, or other property so received, transferred, or exchanged. No increase in basis shall be allowed on account of such events in taxable years not governed by the income tax law of 1957, except as provided by this subsection. As used in this subsection the words "double taxation" mean and refer to double taxation of the same taxpayer, or taxation of both a corporation and its shareholders when the taxation of both would not have occurred had the income tax law of 1957 governed prior taxable years.

(e) In the determination of the basis or adjusted basis of any stock, securities, or other property:

(1) If the property was acquired by an exchange (including an involuntary conversion or the sale of an old residence and purchase of a new residence where both occur within a one-year period) the "cost" thereof to the taxpayer shall be deemed to include among other things, any income of the taxpayer recognized by the income tax laws of 1901 and 1932 as a result of the exchange;

(2) If the basis is dependent upon acquisition from a decedent, the property shall be deemed to have been acquired from a decedent if deemed so acquired for the purposes of chapter 236 prior to July 1, 1983, or after June 30, 1983, under this chapter but not otherwise, and the residence or nonresidence of the decedent, the location of the property, and chapter 236 for property acquired prior to July 1, 1983, or this chapter where the property has been acquired after June 30, 1983, shall be considered;

(3) If the basis is dependent upon deductions, exclusions, or exemptions taken or allowable, under the Internal Revenue Code or a prior applicable federal income tax law, in a prior year, it shall depend upon deductions, exclusions, or exemptions taken or allowable under the income tax law of the State governing such prior years;

(4) If the basis is dependent upon the election provided for by section 307, Internal Revenue Code, it shall be governed by the election actually made under the Internal Revenue Code for the taxable year, whether or not the taxable year was governed by the income tax law of 1957. [L Sp 1957, c 1, pt of §2; am L Sp 1959

2d, c 1, §16; Supp, §121-2; HRS §235-3; am L 1979, c 62, §pt of §2; am L 1983, c 217, §§7(1), (2); am imp L 1984, c 90, §1; gen ch 1985; am L 1996, c 187, §4]

§235-4 Income taxes by the State; residents, nonresidents, corporations, estates, and trusts. (a) Residents. The tax imposed by this chapter applies to the entire income of a resident, computed without regard to source in the State.

(b) Nonresidents. In the case of a nonresident, the tax applies to the income received or derived from property owned, personal services performed, trade, or business carried on, and any and every other source in the State.

In the case of a nonresident spouse filing a joint return with a resident spouse, the tax applies to the entire income of the nonresident spouse computed without regard to source in the State.

(c) Change of status. Except where a joint return is filed, when the status of a taxpayer changes during the taxable year from resident to nonresident, or from nonresident to resident, the tax imposed by this chapter applies to the entire income earned during the period of residence in the manner provided in subsection (a) of this section and during the period of nonresidence the tax shall apply upon the income received or derived as a nonresident in the manner provided in subsection (b) of this section; provided that if it cannot be determined whether income was received or derived during the period of residence or during the period of nonresidence, there shall be attributed to the State such portion of the income as is determined by applying to such income for the whole taxable year the ratio which the period of residence in the State bears to the whole taxable year, unless the taxpayer shows to the satisfaction of the department of taxation that the result is to attribute to the state income, dependent upon residence, received or derived during the period of nonresidence, in which event the amount of income as to which such showing is made shall be excluded.

The apportionment of income provided by this subsection shall not apply where one spouse is a resident of this State and a joint return is filed with the nonresident spouse in which event the tax shall be computed on their aggregate income in the manner provided in section 235-52 without regard to source in the State. Where, however, both spouses change their status from resident to nonresident or from nonresident to resident, their income shall be apportioned in the manner provided in this subsection.

(d) A corporation, foreign or domestic, is taxable upon the income received or derived from property owned, trade or business carried on, and any and every other source in the State. In addition thereto a domestic corporation is taxable upon its income from property owned, trade or business carried on, and any and every other source outside the State, unless subjected to income tax thereon in any other jurisdiction. Subjection to federal tax does not constitute subjection to income tax in another jurisdiction. "Corporation" includes any professional corporation incorporated pursuant to chapter 415A or 416.

(e)(1) The income of a resident estate or trust shall be computed without regard to source in the State. The income of a nonresident estate or trust shall be that received or derived from sources in the State.

(2) A beneficiary of an estate or trust, or person treated as the owner of any portion of a trust, who is taxable upon income thereof under the Internal Revenue Code, shall be taxed thereon as herein provided, irrespective of the taxability of the estate or trust or whether it is required to make a fiduciary return under this chapter. If all such income consists of income which would be taxable under this chapter if received directly by the beneficiary or person, the beneficiary or person shall be taxed upon all of it. If some of it consists of income which would not be taxable if received directly by the beneficiary or person, then unless the trust instrument provides otherwise the income of each such beneficiary or person shall be conclusively presumed to have been received or derived out of each class of income of the estate or trust, and the beneficiary or person shall be taxed upon such part of it as would be taxable if received directly by the beneficiary or person.

(3) Each estate or trust shall include in its return all of the information necessary to determine the taxability of the income of the estate or trust, regardless of source. Only in the case of a nonresident estate or trust of which all the beneficiaries are nonresidents and no part of which is treated as owned by a resident shall the return be confined to income from sources in the State. This paragraph shall not cause income to be taxed to an estate or trust that otherwise would not have been so taxed. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-3; HRS §235-4; am L 1969, c 226, §5; am L 1974, c 9, §1; am L 1976, c 60, §1; am L 1978, c 95, §1; am L 1983, c 167, §18 and c 206, §1; am imp L 1984, c 90, §1; gen ch 1985; am L 1988, c 141, §19]

Note

Chapter 416 referred to in text is repealed.

Cross References

Professional corporations, see chapter 415A.

Attorney General Opinions

Refund of real property tax after termination of a trust becomes income to the beneficiaries. Att. Gen. Op. 64-5.
Taxability of income earned out-of-state by resident. Att.. Gen. Op. 65-5.

Case Notes

Income tax not applicable to inheritance under territorial laws. 14 H. 38.
Tax on annuity from property held in trust is payable by annuitant and not trustee. 20 H. 589.
Annuities paid from trust taxable as income. 32 H. 51. Tax paid by employer for employee is income of employee. 38 H. 188.
Gifts inter vivos deemed not income. 25 H. 603.
Tax on income in year payment made for damages caused by labor strike.
Stock of mainland agents is taxable by Territory. 26 H. 299, aff'd 289 F. 664.
Only taxes actually paid during the taxable year deductible as expenses and not reserve for taxes for succeeding years. 27 H. 336.
Intangibles. 31 H. 264, aff'd 47 F.2d 869.
Profits realized from sale of stock taxable in year of transaction. Tax on profit on stock redeemed by corporation. 32 H. 896, aff'd 79 F.2d 671.
Retrospective tax laws. 33 H. 766.
Tax on income of corporation is valid. 1 U.S.D.C. Haw 294, aff'd 121 F. 772.
Ability of State to tax income of nonresidents turns on situs of property generating income. 64 H. 258, 640 P.2d 282.
Intangible property generating income acquired a business situs in Hawaii and could be taxed under subsections (b) and (e)(2). 64 H. 258, 640 P.2d 282.

§235-4.5 Taxation of trusts, beneficiaries; credit. (a) There shall be excluded from gross income any intangible income, such as dividends and interest, earned by a trust sited in this State to the extent that, during the taxable year of the trust, the beneficial interest in the trust shall be held by a beneficiary or beneficiaries residing outside this State. This exclusion shall not apply to income received from real property held in a land trust formed under chapter 558.

(b) If a trust sited in this State owns one hundred per cent of the stock of a foreign corporation which does not engage in an active trade or business but acts solely as a holding company receiving intangible income, such as dividends and interest, the intangible income of the foreign corporation shall be excluded from gross income for Hawaii income tax purposes but only to the extent that the income of the trust beneficiaries is excluded from taxation under subsection (a). As used in this section, foreign corporation means a corporation not created or organized in the United States or under the laws of the United States, Hawaii, or any other state.

(c) Any resident beneficiary of a trust with a situs in another state may claim a credit for income taxes paid by the trust to the other state on any income received which is attributable to assets other than intangibles. [L 1985, c 283, §1; am L 1988, c 33, §1]

§235-5 Allocation of income of persons not taxable upon entire income. (a) This section applies to income not subject to part II of this chapter, including nonbusiness income and certain section 235-22 income.

(b) Income (including gains), also losses, from property owned in the State and from any other source in the State shall be determined by an allocation and separate accounting so far as practicable. Losses from property owned outside the State and from other sources outside the State shall not be deducted.

(c) Deductions connected with income taxable under this chapter shall be allowed, but deductions connected with income not taxable under this chapter shall not be allowed. Deductions from adjusted gross income that are not connected with particular property or income, such as medical expenses, shall be allowed only to the extent of the ratio of the adjusted gross income attributed to this State to the entire adjusted gross income computed without regard to source in the State.

Deductions by individual taxpayers from gross income for alimony and separate maintenance payments under section 215 of the Internal Revenue Code shall be allowed only to the extent of the ratio of gross income attributed to this State to the entire gross income computed without regard to source in this State; provided that as used in this sentence "gross income" means gross income as defined in the Internal Revenue Code, minus the deductions allowed by section 62 of the Internal Revenue Code, other than the deductions for alimony and separate maintenance payments under section 215 of the Internal Revenue Code.

Deductions by individual taxpayers from gross income for pension, profit-sharing, stock bonus plans, and other plans qualified under sections 401 to 409 of the Internal Revenue Code, as such sections are operative for the purposes of this chapter, shall be allowed only to the extent that such deductions are attributed to compensation earned in this State.

(d) If in the opinion of the department the allocations hereinabove provided do not clearly and accurately reflect the actual amount of the adjusted gross income and taxable income received or derived from all property owned and any and every other source in the State, or if any person shows that the allocations hereinabove provided result in adjusted gross income or taxable income being attributed to the State in a larger amount than is just and equitable, then the same shall be determined, allocated, and apportioned under such rules, processes, and formulas as the department prescribes as being just and equitable. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-4; HRS §235-5; am L 1978, c 173, §2(6); am L 1983, c 88, §2; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 11, §1]

§235-5.5 Individual housing accounts. (a) There shall be allowed as a deduction from gross income the amount, not to exceed $5,000, paid in cash during the taxable year by an individual taxpayer to an individual housing account established for the individual's benefit to provide funding for the purchase of the individual's first principal residence. A deduction not to exceed $10,000 shall be allowed for a married couple filing a joint return. No deduction shall be

allowed on any amounts distributed less than three hundred sixty-five days from the date on which a contribution is made to the account. Any deduction claimed for a previous taxable year for amounts distributed less than three hundred sixty-five days from the date on which a contribution was made shall be disallowed and the amount deducted shall be included in the previous taxable year's gross income and the tax reassessed. The interest paid or accrued within the taxable year on the account shall not be included in the individual's gross income. For purposes of this section, the term "first principal residence" means a residential property purchased with the payment or distribution from the individual housing account which shall be owned and occupied as the only home by an individual who did not have any interest in, individually, or whose spouse did not have any interest in, if the individual is married, a residential property within the last five years of opening the individual housing account.

In the case of a married couple filing separate returns, the sum of the deductions allowable to each of them for the taxable year shall not exceed $5,000, or $10,000 for a joint return, for amounts paid in cash, excluding interest paid or accrued thereon.

The amounts paid in cash allowable as a deduction under this section to an individual for all taxable years shall not exceed $25,000, excluding interest paid or accrued. In the case of married individuals having separate individual housing accounts, the sum of the separate accounts and the deduction under this section shall not exceed $25,000, excluding interest paid or accrued thereon.

(b) For purposes of this section, the term "individual housing account" means a trust created or organized in Hawaii for the exclusive benefit of an individual, or, in the case of a married individual, for the exclusive benefit of the individual and spouse jointly, but only if the written governing instrument creating the trust meets the following requirements:

(1) Contributions shall not be accepted for the taxable year in excess of $5,000 (or $10,000 in the case of a joint return) or in excess of $25,000 for all taxable years, exclusive of interest paid or accrued;

(2) The trustee is a bank, a savings and loan association, a credit union, or a depository financial services loan company, chartered, licensed, or supervised under federal or state law, whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Administration, or any agency of this State or any federal agency established for the purpose of insuring accounts in these financial institutions. The financial institution must actively make residential real estate mortgage loans in Hawaii;

(3) The assets of the trust shall be invested only in fully insured savings or time deposits. Funds held in the trust may be commingled for purposes of investment, but individual records shall be maintained by the trustee for each individual housing account holder which show all transactions in detail;

(4) The entire interest of an individual or married couple for whose benefit the trust is maintained shall be distributed to the individual or couple not later than one hundred twenty months after the date on which the first contribution is made to the trust;

(5) Except as provided in subsection (g), the trustee shall not distribute the funds in the account unless it (A) verifies that the money is to be used for the purchase of a first principal residence located in Hawaii, and provides that the instrument of payment is payable to the mortgagor, construction contractor, or other vendor of the property purchased; or (B) withholds an amount equal to ten per cent of the amount withdrawn from the account and remits this amount to the director within ten days after the date of the withdrawal. The amount so withheld shall be applied to the liability of the taxpayer under subsections (c) and (e); and

(6) If any amounts are distributed before the expiration of three hundred sixty-five days from the date on which a contribution is made to the account, the trustee shall so notify in writing the taxpayer and the director. If the trustee makes the verification required in paragraph (5)(A), then the department shall disallow the deduction under subsection (a) and subsections (c), (e), and (f) shall not apply to that amount. If the trustee withholds an amount under paragraph (5)(B), then the department shall disallow the deduction under subsection (a) and subsection (e) shall apply, but subsection (c) shall not apply.

(c) Any contributions paid or distributed out of an individual housing account shall be included in gross income by the individual for whose benefit the account was established for the taxable year in which the payment or distribution is received, unless the amount is used exclusively in connection with the purchase of the first principal residence in Hawaii for the individual for whose benefit the account was established.

(d) The transfer of an individual's interest in an individual housing account to a spouse under a dissolution of marriage decree or under a written instrument incident to a dissolution of marriage shall not be considered a taxable transfer made by the individual, and the interest, at the time of the transfer, shall be treated as part of an individual housing account of the transferee, and not of the transferor. After the transfer, the account shall be treated, for purposes of this section, as maintained for the benefit of the transferee.

(e) If a distribution from an individual housing account to an individual for whose benefit the account was established is made and not used in connection with the purchase of the first principal residence in Hawaii for the individual, the tax liability of the individual under this chapter for the taxable year in which the distribution is received shall be increased by an amount equal to ten per cent of the amount of the distribution which is includable in the individual's gross income for the taxable year.

If, during any taxable year, the individual uses the account or any portion thereof as security for a loan, the portion so used shall be treated as if it had been distributed to that individual.

(f) If the individual for whose benefit the individual housing account was established purchases a residential property in Hawaii with the distribution from the individual housing account:

(1) Before January 1, 1990, and if the individual sells in any manner or method or by use of any instrument conveying or transferring the residential property, the gross income of the individual under this chapter for the taxable year in which the residential property is sold, conveyed, or transferred, whichever is applicable, shall include an amount equal to the amount of the distribution from the individual housing account, and in addition, the tax liability of the individual shall be increased by an amount equal to ten per cent of the total distribution from the individual housing account.

(2) After December 31, 1989, the individual shall report one-tenth of the total distribution from the individual housing account used to purchase the residential property as gross income in the taxable year in which the distribution is completed and in each taxable year thereafter until all of the distribution has been included in the individual's gross income at the end of the tenth taxable year after the purchase of the residential property. If the individual sells in any manner or method or by use of any instrument conveying or transferring the residential property, the gross income of the individual under this chapter for the taxable year in which the residential property is sold, conveyed, or transferred, whichever is applicable, shall include an amount equal to the amount of the distribution from the individual housing account not previously reported as gross income, and in addition, the tax liability of the individual shall be increased by an amount equal to ten per cent of the total distribution from the individual housing account. If the individual sells the residential property in any manner as provided in this paragraph after all of the distribution has been included in the individual's gross income at the end of the tenth taxable year after the purchase of the residential property, the tax liability of the individual shall not be increased by an amount equal to ten per cent of the total distribution from the individual housing account.An individual who purchased a residential property in Hawaii with the distribution from an individual housing account before January 1, 1990, who is subject to paragraph (1) may elect to report as provided in paragraph (2). The election shall be made before January 1, 1991. If the individual makes the election, the individual shall report one-tenth of the total distribution from the individual housing account as gross income in the taxable year in which the election occurs and in each taxable year thereafter until all of the distribution has been included in gross income as provided by paragraph (2). If the individual making the election sells the residential property in any manner as provided in paragraph (2), then the individual shall include as income the amount of the distribution not previously reported as income and increase the individual's tax liability as provided in the second sentence of paragraph (2), except when the third sentence of paragraph (2) applies.

(g) No tax liability shall be imposed under this section if:

(1) The payment or distribution is attributable to the individual dying or becoming totally disabled; or

(2) Residential property subject to subsection (f) is transferred by will or by operation of law or sold due to the death or total disability of an individual or individual's spouse, subject to the following:

An individual shall not be considered to be totally disabled unless proof is furnished of the total disability in the form and manner as the director may require.

Upon the death of an individual for whose benefit an individual housing account has been established, the funds in the account shall be payable to the estate of the individual; provided that if the account was held jointly by the decedent and a spouse of the decedent, the account shall terminate and be paid to the surviving spouse; or, if the surviving spouse so elects, the spouse may continue the account as an individual housing account. Upon the total disability of an individual for whose benefit an individual housing account has been established, the individual or the individual's authorized representative may elect to continue the account or terminate the account and be paid the assets; provided that if the account was held jointly by a totally disabled person and a spouse of that person, then the spouse or an authorized representative may elect to continue the account or terminate the account and be paid the assets.

(h) If the individual for whose benefit the individual housing account was established subsequently marries a person who has or has had any interest in residential property, the individual's housing account shall be terminated, the funds therein shall be distributed to the individual, and the amount of the funds shall be includable in the individual's gross income for the taxable year in which such marriage took place; provided that the tax liability defined under subsection (f) shall not be imposed.

(i) The trustee of an individual housing account shall make reports regarding the account to the director and to the individual for whom the account is maintained with respect to contributions, distributions, and other matters as the director may require under rules. The reports shall be filed at a time and in a manner as may be required by rules adopted under chapter 91. A person who fails to file a required report shall be subject to a penalty of $10 to be paid to the director for each instance of failure to file. [L 1982, c 285, §2; am L 1986, c 231, §2; am L 1990, c 99, §§1, 2; am L 1992, c 183, §§1, 2; am L 1994, c 49, §1]

§235-6 Foreign manufacturing corporation; warehousing of products. (a) For the purposes of sections 235-21 to 235-39, a foreign corporation engaged in the business of manufacturing without the State, having its manufactured products warehoused in this State by another person who is engaged in the business of warehousing in

this State and whose compensation for providing the warehousing is included in the measure of the tax imposed by chapter 237 or 239, shall not be deemed to be carrying on a trade or business in this State if all of the following requirements are met:

(1) Every delivery of sale of such products so warehoused is made at the warehouse to fill an order for such property procured by a representative (as defined in subsection (b)) from a seller licensed under chapter 237 and purchasing such property for purposes of resale;
(2) Every order so procured was made subject to acceptance and was accepted by the corporation at an office located out of this State;
(3) No collection for the payment of the products delivered as described in paragraph (1) is made in this State by any of its employees or agents or by any representative; and
(4) Except as provided in this section, it is not carrying on a trade or business in this State within the meaning of sections 235-21 to 235-39.

(b) "Representative" means a salesperson, commission agent, broker, or other person who is authorized or employed as an independent contractor and not as an employee by the foreign manufacturing corporation described in subsection (a) to assist the manufacturer in selling its products in this State, by procuring orders for such sale, and who carries on such activities in this State (it being immaterial whether such activities are regular or intermittent), but whose functions and authority do not include the accepting of orders for, or the making of deliveries of, or the collecting of payment for deliveries of such products. [L 1963, c 70, §1; Supp, §121-4.1; HRS §235-6; am L 1992, c 134, §1; gen ch 1993]

§235-7 Other provisions as to gross income, adjusted gross income, and taxable income. (a) There shall be excluded from gross income, adjusted gross income, and taxable income:

(1) Income not subject to taxation by the State under the Constitution and laws of the United States;
(2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
(3) Any compensation received in the form of a pension for past services;
(4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;
(5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
(6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any such express exemption or exclusion;
(7) The first $1,750 received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty;
(8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country, provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft which are documented or registered under the laws of the United States;
(9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
(10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
(11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents; and
(12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption.

(b) There shall be included in gross income, adjusted gross income, and taxable income: (1) unless excluded by this chapter relating to the uniformed services of the United States, cost-of-living allowances and other payments exempted by section 912 of the Internal Revenue Code, but section 119 of the Internal Revenue Code nevertheless shall

apply; (2) unless expressly exempted or excluded as provided by subsection (a)(6), interest on the obligations of a State or a political subdivision thereof.

(c) The deductions of or based on dividends paid or received, allowed to a corporation under chapter 1, subchapter B, Part VIII of the Internal Revenue Code, shall not be allowed. In lieu thereof there shall be allowed as a deduction the entire amount of dividends received by any corporation upon the shares of stock of a national banking association, qualifying dividends, as defined in section 243(b) of the Internal Revenue Code, received by members of an affiliated group, or dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (Public Law 85-699) upon shares of stock qualifying under paragraph (3), seventy per cent of the amount received by any corporation as dividends:

(1) Upon the shares of stock of another corporation, if at the date of payment of the dividend at least ninety-five per cent of the other corporation's capital stock is owned by one or more corporations doing business in this State and if the other corporation is subjected to an income tax in another jurisdiction (but subjection to federal tax does not constitute subjection to income tax in another jurisdiction);

(2) Upon the shares of stock of a bank or insurance company organized and doing business under the laws of the State;

(3) Upon the shares of stock of another corporation, if at least fifteen per cent of the latter corporation's business, for the taxable year of the latter corporation preceding the payment of the dividend, has been attributed to this State. However, except for national bank dividends, the deductions under this subsection are not allowed when they would not have been allowed under section 243 of the Internal Revenue Code, as amended by Public Law 85-866, by reason of subsections (b) and (c) of section 246 of the Internal Revenue Code. For the purposes of this subsection fifteen per cent of a corporation's business shall be deemed to have been attributed to this State if fifteen per cent or more of the entire gross income of the corporation as defined in this chapter (which for the purposes of this subsection shall be computed without regard to source in the State and shall include income not taxable by reason of the fact that it is from property not owned in the State or from a trade or business not carried on in the State in whole or in part), under section 235-5 and the other provisions of this chapter, shall have been attributed to the State and subjected to assessment of the taxable income therefrom (including the determination of the resulting net loss, if any).

(d)(1) For taxable years ending before January 1, 1967, the net operating loss deductions allowed as carry backs and carryovers by the Internal Revenue Code shall not be allowed. In lieu thereof the net operating loss deduction shall consist of the excess of the deductions allowed by this chapter over the gross income, computed with the modifications specified in paragraphs (1) to (4) of section 172(d) of the Internal Revenue Code, and with the further modification stated in paragraph (3) hereof; and shall be allowed as a deduction in computing the taxable income of the taxpayer for the succeeding taxable year.

(2) (A) With respect to net operating loss deductions resulting from net operating losses for taxable years ending after December 31, 1966, the net operating loss deduction provisions of the Internal Revenue Code shall apply, provided that there shall be no net operating loss deduction carried back to any taxable year ending prior to January 1, 1967.

(B) In the case of a taxable year beginning in 1966 and ending in 1967, the entire amount of all net operating loss deductions carried back to the taxable year shall be limited to that portion of taxable income for such taxable year which the number of days in 1967 bears to the total days in the taxable year ending in 1967.

(C) The computation of any net operating loss deduction for a taxable year covered by this subsection shall require the further modifications stated in paragraphs (3), (4), and (5) of this subsection.

(3) In computing the net operating loss deduction allowed by this subsection there shall be included in gross income the amount of interest which is excluded from gross income by subsection (a), decreased by the amount of interest paid or accrued which is disallowed as a deduction by subsection (e). In determining the amount of the net operating loss deduction under this subsection of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which the corporation is an electing small business corporation.

(4) No net operating loss carryback or carryover shall be allowed by this chapter if not allowed under section 172 of the Internal Revenue Code.

(5) The election to relinquish the entire carryback period with respect to a net operating loss allowed under section 172(b)(3)(C) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that no taxpayer shall make such an election as to a net operating loss of a business where such net operating loss occurred in the taxpayer's business prior to the taxpayer entering business in this State.

(e) There shall be disallowed as a deduction the amount of interest paid or accrued within the taxable year on indebtedness incurred or continued, (1) to purchase or carry bonds the interest upon which is excluded from gross income by subsection (a); or (2) to purchase or carry property owned without the State, or to carry on trade or business without the State, if the taxpayer is a person taxable only upon income from sources in the State.

(f) Losses of property as the result of tidal wave, hurricane, earthquake, or volcanic eruption, or as a result of flood waters overflowing the banks or walls of a river or stream, or from any other natural disaster, to the extent of the amount deductible, under this chapter, not compensated for by insurance or otherwise, may be deducted in the taxable year in which sustained, or at the option of the taxpayer may be deducted in equal installments over a period of five years, the first such year to be the calendar year or fiscal year of the taxpayer in which such loss occurred.

(g) In computing taxable income there shall be allowed as a deduction:

(1) Political contributions by any taxpayer not in excess of $250 in any year; provided that such contributions are made to a central or county committee of a political party whose candidates shall have qualified by law to be voted for at the immediately previous general election; or

(2) Political contributions by any individual taxpayer in an aggregate amount not to exceed $1,000 in any year; provided that such contributions are made to candidates as defined in section 11-191, who have agreed to abide by the campaign expenditure limits as set forth in section 11-209; and provided further that not more than $250 of an individual's total contribution to any single candidate shall be deductible for purposes of this section. [L Sp 1957, c 1, pt of §2; am L 1959, c 276, §2 and c 277, §8(a); am L Sp 1959 1st, c 29, §8; am L 1963, c 26, §1, c 47, §1, c 91, §2 and c 146, §4; am L 1965, c 155, §31(a) and c 201, §5; Supp, §121-5; am L 1967, c 32, §1; HRS §235-7; am L 1968, c 18, §2; am L 1969, c 152, §1; am L 1970, c 180, §1; am L 1971, c 95, §1; am L 1976, c 156, §6; am L 1978, c 173, §2(7); am L 1979, c 62, §§2(6) and (7), c 105, §21, and c 224, §3; am L 1981, c 185, §1 and c 209, §2; am L 1982, c 25, §2; am L 1983, c 124, §16; am imp L 1984, c 90, §1; gen ch 1985; am L 1987, c 39, §3 and c 239, §§1(7) and (8); am L 1990, c 340, §2; am L 1992, c 103, §1; am L 1993, c 337, §5; am L Sp 1995, c 10, §3]

Note

The 1995 amendment applies to taxable years beginning after December 31, 1994. L Sp 1995, c 10, §8.

Attorney General Opinions

Federal home loan banks, not being national banks, dividends received therefrom are taxable. Att. Gen. Op. 65-8.

Case Notes

Depreciation not actually sustained during year, not deductible. 18 H. 15.
No federal or territorial inhibition against imposition of tax upon income accruing prior to enactment. 33 H. 766.
Insurance premiums on life of president not an actual business expense. 36 H. 11.
Cited: 18 H. 530; 18 H. 596; 34 H. 515, 583.

§235-7.5 Certain unearned income of minor children taxed as if parent's income. (a) In the case of any child to whom this section applies, the tax imposed by this chapter shall be equal to the greater of:

(1) The tax imposed by section 235-51 without regard to this section, or

(2) The sum of:

(A) The tax which would be imposed by section 235-51 if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(B) Such child's share of allocable parental tax.

(b) This section shall apply to any child for any taxable year if:

(1) Such child has not attained age fourteen before the close of the taxable year, and

(2) Either parent of such child is alive at the close of the taxable year.

(c) For the purpose of this section:

(1) The term "allocable parental tax" means the excess of:

(A) The tax which would be imposed by section 235-51 on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this section applies, over,

(B) The tax imposed by section 235-51 on the parent without regard to this section. For purposes of subparagraph (A), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(2) A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this section applies.

(3) If tax is imposed under section 644(a)(1) (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code with respect to the sale or exchange of any property of which the parent was the transferor, for purposes of applying paragraph (1) to the taxable year of the parent in which such sale or exchange occurs:

(A) Taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i) of the Internal Revenue Code, and

(B) The amount described in paragraph (1)(B) shall be increased by the amount of the excess referred to in section 644(a)(2)(A) of the Internal Revenue Code.

Section 644 (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code shall be operative for this section as provided in section 235-2.4.

(4) Except as provided in rules, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(d) For purposes of this section:

(1) The term "net unearned income" means the excess of:

(A) The portion of the adjusted gross income for the taxable year which is not attributable to earned income as defined in the Internal Revenue Code, over,

(B) The sum of:

(i) The amount in effect for the taxable year under section 63(c)(5)(A) (relating to the limitation on standard deduction in the case of certain dependents) of the Internal Revenue Code as operative under section 235-2.4(a), plus

(ii) The greater of the amount described in clause (i) or, if the child itemizes the child's deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in subparagraph (A).

(2) The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(e) For purposes of this section, the parent whose taxable income shall be taken into account shall be:

(1) In the case of parents who are not married (within the meaning of section 235-93), the custodial parent (within the meaning of section 152(e) (with respect to the support test in case of child of divorced parents, etc.) of the Internal Revenue Code) of the child, and

(2) In the case of married individuals filing separately, the individual with the greater taxable income.

(f) The parent of any child to whom this section applies for any taxable year shall provide the social security number of such parent to such child and such child shall include such parent's social security number on the child's return of tax imposed by this section for such taxable year.

(g) Election to claim certain unearned income of child on parent's return.

(1) If:

(A) Any child to whom this section applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(B) Such gross income is more than $500 and less than $5,000,

(C) No estimated tax payments for such year are made in the name and social security number of such child, and no amount has been deducted and withheld under section 3406 (with respect to backup withholding) of the Internal Revenue Code, and

(D) The parent of such child (as determined under subsection (e)) elects the application of paragraph (2), such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under this chapter.

(2) In the case of a parent making the election under this subsection:

(A) The gross income of each child to whom such election applies (to the extent the gross income of such child exceeds $1,000) shall be included in such parent's gross income for the taxable year,

(B) The tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of:

(i) The amount determined under section 235-51 after the application of subparagraph (A), plus

(ii) For each such child, the lesser of $10 or two per cent of the excess of the gross income of such child over $500.

(3) The director shall prescribe such rules as may be necessary or appropriate to carry out the purposes of this subsection. [L 1987, c 239, §1(3); am L 1989, c 13, §4; am L 1990, c 15, §2; am L 1991, c 54, §2]

§235-8 REPEALED. L 1987, c 239, §1(9).

§235-9 Exemptions; generally. Except as provided in sections 235-61 to 235-67 relating to withholding and collection of tax at source, and section 235-2.4 relating to "unrelated business taxable income", the following persons and organizations shall not be taxable under this chapter: Banks, building and loan associations, financial services loan companies, financial corporations, small business investment companies, trust companies, mortgage loan companies, financial holding companies, subsidiaries of financial holding companies as defined in chapter 241, and development companies taxable under chapter 241; and insurance companies, agricultural cooperative associations, and fish marketing associations exclusively taxable under other laws.[L Sp 1957, c 1, pt of §2; am L 1965, c 224, §4; Supp,

§121-6; HRS §235-9; am L 1976, c 156, §7 and c 203, §4; am L 1979, c 62, §2(8); am L 1982, c 92, §4; am imp L 1984, c 90, §1; gen ch 1985; am L 1987, c 239, §1(10); am L 1989, c 266, §3; am L 1992, c 106, §2]

Case Notes

Exempting particular classes from income taxes does not render law objectionable on grounds of inequality. 35 H. 855, aff'd 130 F.2d 786.
Exemption is grant of immunity where otherwise liable to assessment. 35 H. 855, aff'd 130 F.2d 786.
Claims for exemption strictly construed. 36 H. 340.

§235-10 REPEALED. L 1978, c 173, §2(8).

§235-11 REPEALED. L 1988, c 107, §1.

§235-12 Energy conservation; income tax credit. (a) For taxable years ending before January 1, 1990, except in the case of ice storage systems for taxable years ending before January 1, 1991, each individual and corporate resident taxpayer who files an individual or corporate net income tax return for a taxable year, may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for any solar or wind energy device, heat pump, or ice storage system in an amount not to exceed ten percent of the total cost of the device, heat pump, or ice storage system; provided that the tax credit shall apply only to the actual cost of the solar or wind energy device, the heat pump, or ice storage system, their accessories, and installation and shall not include the cost of consumer incentive premiums unrelated to the operation of the solar or wind energy device, the heat pump, or ice storage system offered with the sale of the solar or wind energy device, the heat pump, or ice storage system. The credit shall be claimed against net income tax liability for the year in which the solar or wind energy device, the heat pump, or ice storage system was purchased and placed in use; provided:

(1) The tax credit shall be applicable only with respect to solar devices, which are erected and placed in service after December 31, 1974, but before January 1, 1990;
(2) In the case of wind energy devices and heat pumps, the tax credit shall be applicable only with respect to wind energy devices and heat pumps which are installed and placed in service after December 31, 1980, but before January 1, 1990; and
(3) In the case of ice storage systems, the tax credit shall be applicable only with respect to ice storage systems which are installed and placed in service after December 31, 1985, but before January 1, 1990.

Tax credits which exceed the taxpayer's income tax liability maybe used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. If federal energy tax credits are not extended beyond December 31, 1985, are not retroactively extended or reenacted, or federal energy tax credits the same as or less in amount than the credits in effect during the 1985 taxable year are not enacted during the taxable year 1986, then the state tax credit shall be increased to fifteen per cent of the total cost after December 31, 1985, but before January 1, 1990.

As used in this subsection:

"Solar or wind energy device" means any new identifiable facility, equipment, apparatus, or the like which makes use of solar or wind energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for their generation.

"Heat pump" means and refers to an electric powered compression heating system which extracts energy from warm ambient air or recovers waste heat to assist in the production of hot water.

"Ice storage system" refers to ice banks or other cool energy storage tanks, containers, accessories, and controls that are specifically designed to store ice or chilled fluids for the express purpose of shifting the consumption of energy to off-peak periods.

(b) For taxable years beginning after December 31, 1989, each individual or corporate resident taxpayer who files an individual or corporate net income tax return for a taxable year, may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit maybe claimed as follows:

(1) For wind energy systems that are installed and placed in service after December 31, 1989, but before January 1, 1999, the credit shall be twenty per cent of the actual cost;
(2) For solar energy systems that are installed and placed in service after December 31, 1989, but before January 1, 1999, on new and existing single family residential buildings, the credit shall be in an amount not to exceed thirty-five per cent or $1, 750, whichever is less, of the actual cost of the solar energy system;
(3) For solar energy systems that are installed and placed in service after December 31, 1989, but before January 1, 1999, on new and existing multi unit buildings used primarily for residential purposes, the credit shall be in an amount not to exceed thirty-five per cent or $350 per building unit, whichever is less, of the actual cost of the solar energy system; provided that a licensed professional engineer reviews the design of the system and provides a written opinion that the system, in accordance with recognized engineering practice, is designed to provide not less than eighty per cent of the daily annual average hot water needs of all the occupants of the building;

(4) For solar energy systems that are installed and placed in service after December 31, 1989, but before January 1, 1999, in new and existing hotel, commercial, and industrial facilities, the credit shall be in an amount not to exceed thirty-five per cent of the actual cost of the solar energy system;
(5) For heat pumps that are installed and placed in service after December 31, 1989, but before January 1, 1999, in new and existing single-family residential buildings, the credit shall be in an amount not to exceed twenty per cent or $400, whichever is less, of the actual cost of the heat pump;
(6) For heat pumps that are installed and placed in service after December 31, 1989, but before January 1, 1999, in new and existing multiunit buildings used primarily for residential purposes, the credit shall be in an amount not to exceed twenty per cent or $200 per building unit, whichever is less, of the actual cost of the heat pump; provided that a licensed professional engineer reviews the design of the system and provides a written opinion that the system, in accordance with recognized engineering practice, is designed to provide not less than ninety per cent of the daily annual average hot water needs of all of the occupants of the building;
(7) For heat pumps that are installed and placed in service after December 31, 1989, but before January 1, 1999, in new and existing hotel, commercial, and industrial facilities, the credit shall be in an amount not to exceed twenty per cent of the actual cost of the heat pump; and
(8) For ice storage systems that are installed and placed in service after December 31, 1990, but before January 1, 1999, the credit shall be in an amount not to exceed fifty per cent of the actual cost of the ice storage system.

The per unit of actual cost of a solar energy system or heat pump referred to in subsection (b)(3) and (6) shall be determined by multiplying the actual cost of the solar energy system or heat pump installed and placed in service in the multiunit building by a fraction, the numerator being the total square feet of that unit in the multiunit building, and the denominator being the total square feet of all the units in the multiunit building.

(c) Tax credits shall apply only to the actual cost of the solar or wind energy system, heat pump, or ice storage system, including their accessories and installation, and shall not include the cost of consumer incentive premiums unrelated to the operation of the system or offered with the sale of the system or heat pump. The tax credit shall be claimed against net income tax liability for the year in which the solar or wind energy system, heat pump, or ice storage system was purchased and placed in use in Hawaii. Tax credits that exceed the taxpayer's income tax liability may be used as credit against the taxpayer's income tax liability in subsequent years until exhausted.

(d) The director of taxation shall prepare such forms as may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish reasonable information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(e) As used in this section:

"Solar or wind energy system" means any new identifiable facility, equipment, apparatus, or the like that converts solar insolation or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for their generation.

"Heat pump" means an electric powered compression heating system that extracts energy from warm ambient air or recovers waste heat to assist in the production of hot water.

"Ice storage system" refers to ice banks or other cool energy storage tanks, containers, accessories, and controls that are specifically designed to store ice or chilled fluids for the express purpose of shifting the consumption of energy to off-peak periods. [L 1976, c 189, §1; am L 1980, c 177, §2; am L 1981, c 233, §1; am L 1983, c 67, §1; am imp L 1984, c 90, §1; gen ch 1985; am L 1985, c 232, §2; am L 1986, c 66, §1, c 70, §1 and c 339, §18; am L 1989, c 307, §2; am L 1990, c 319, §3; am L 1993, c 93, §1]

§235-12.2 REPEALED. L 1988, c 64, §2.

[§235-13] Sales of residential land to lessees; involuntary conversion. (a) A sale by an organization exempt under section 501(c)(3), or treated as an estate or trust under Subchapter J of the Internal Revenue Code to a lessee of the entire interest in the land of the lessor organization, estate, or trust shall be an involuntary conversion of property used in trade or business or a capital asset of the lessor organization, estate, or trust and shall not be a sale of property held by the lessor organization, estate or trust in the ordinary course of a trade or business, irrespective of the number of such sales in any taxable year, if:

(1) The lessee has a right to terminate such lease and to acquire the entire interest of the lessor in the land, which right exists by virtue of chapter 516 and not because of any private agreement or privately created condition;
(2) The lessee exercises the lessee's right to purchase such entire interest;
(3) The lessor organization, estate, or trust has held the land for a period determined under subsection (b) prior to the date of purchase by lessee; and
(4) The land is developed single-family residential land.

(b) The period for which a lessor organization, estate, or trust has held land, within the meaning of subsection (a)(3), shall be determined under the rules of section 1223 of the Internal Revenue Code, except that if such land shall have been acquired by the lessor organization, estate, or trust from a decedent, within the meaning of section 1014 of the Internal Revenue Code, or if such land shall have been acquired by the lessor organization, estate, or trust from a donor, within the meaning of section 1015 (other than section 1015(c)) of the Internal Revenue Code, the holding period shall include the period during which such land shall have been held by such decedent or by such donor and also the period if any for which such land shall have been held by an inter vivos or testamentary trust estate created by such decedent or by such donor.

(c) This section shall not apply with respect to any transaction governed by section 1055 of the Internal Revenue Code.

(d) As used in this section:

(1) "Lessee" means the original lessee and any successor who has the right under chapter 516 to bring about an involuntary conversion.

(2) "Lessor" means any fee simple owner, any sublessor, and any person entitled to share in the rents or subrents of the land involved in an involuntary conversion described in subsection (a).

(e) The gain derived from sales qualified as involuntary conversion of property under this section shall be treated as provided in section 1033 of the Internal Revenue Code of 1954, as amended. [L 1977, c 75, §1; am imp L 1984, c 90, §1; gen ch 1985]

[§235-15] Tax credits to promote the purchase of child passenger restraint systems. (a) Any taxpayer who files an individual income tax return for a taxable year may claim an income tax credit under this section against the Hawaii state individual net income tax.

(b) The tax credit shall be $25; provided that the taxpayer purchases one or more new child passenger restraint systems in the tax year for which the credit is properly claimed; and provided that such restraint system can be shown to be insubstantial conformity with specifications for such restraint systems set forth by the federal motor vehicle safety standards which were in effect at the time of such purchase.

(c) If the tax credit claimed by the taxpayer under this section exceeds the amount of the income tax payments due from the taxpayer, the excess of credit over payments due shall be refunded to the taxpayer; provided that the tax credit properly claimed by a taxpayer who has no income tax liability shall be paid to the taxpayer; and provided that no refunds or payments on account of the tax credit allowed by this section shall be made for amounts less than $1.

(d) The director of taxation shall prepare such forms as may be necessary to claim a credit under this section, may require proof of the claim for the tax credit, and may adopt rules pursuant to chapter 91.

(e) All of the provisions relating to assessments and refunds under this chapter and under section 231-23(c)(1) shall apply to the tax credit under this section.

(f) Claims for the tax credit under this section, including any amended claims, shall be filed on or before the end of the twelfth month following the taxable year for which the credit maybe claimed. [L 1982, c 134, §1]

Revision Note

In subsection (e), "231-23(c)(1)" substituted for "231-23(d)(1)".

§235-16 County surcharge excise tax credit. (a) If the collection of the county general excise and use tax surcharge starts on January 1, 1993, as provided in sections 46-16.7, 237-8.5, and 238-2.5, then for taxable years, in each year that the surcharge is in effect, beginning after December 31, 1992, and ending before January 1, 2003, each resident individual taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, may claim a county surcharge excise tax credit in the amount computed under this section against the resident taxpayer's individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that a resident individual who has no income or no income taxable under this chapter and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes may claim this credit.

(1) Each resident individual taxpayer who resides for more than two hundred days of the taxable year in the aggregate in a county in which the county general excise and use tax surcharge is in effect may claim the tax credit according to the adjusted gross income bracket shown in the following schedule:

TAX CREDIT SCHEDULE

Adjusted Gross Income	Tax Credit
Under $5,000	$ 25
$5,000 under $10,000	45
$10,000 under $15,000	65
$15,000 under $20,000	90
$20,000 under $30,000	110
$30,000 under $40,000	125
$40,000 under $50,000	145
$50,000 under $75,000	185
$75,000 under $100,000	205
$100,000 and over	210

(2) Each resident individual taxpayer who resides for more than two hundred days of the taxable year in the aggregate in a county which has not adopted the county general excise and use tax surcharge may claim a tax credit according to the adjusted gross income bracket shown in the schedule below:

TAX CREDIT SCHEDULE

Adjusted Gross Income	Tax Credit
Under $5,000	$ 5
$5,000 under $10,000	10
$10,000 under $20,000	15
$20,000 under $30,000	20
$30,000 under $40,000	25
$40,000 under $50,000	30
$50,000 under $75,000	35
$75,000 and over	40

A husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.

(b) The tax credit under this section shall not be available to (1) any person who has been convicted of a felony and who has been committed to prison and has been physically confined for the full taxable year; (2) any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or (3) any misdemeanant who has been committed to jail and has been physically confined for the full taxable year.

(c) The tax credits claimed by a resident taxpayer pursuant to this section shall be deductible from the resident taxpayer's individual income tax liability, if any, for the tax year in which they are properly claimed. If the tax credits claimed by a resident taxpayer exceed the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that tax credits properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual.

(d) If the tax credit is claimed by an individual who does not reside in the appropriate county as set forth in subsection(a)(1) or (a)(2), there shall be added to and become a part of the tax liability of the individual:

(1) The amount of the tax credit claimed under this section multiplied by three; or

(2) Ten per cent of the income tax liability for the taxable year for which the individual income tax return is being filed, whichever is greater.

All claims for tax credits under this section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit. [L 1990, c 184, §3; am L 1992, c 235, §§2, 3]

Note

Development agreement requirements and effect of section until December 31, 2002. L 1990, c 184, §§11 and 13.

Cross References

Transit capital development fund, see chapter 51D.

PART II. UNIFORM DIVISION OF INCOME FOR TAX PURPOSES

§235-21 Definitions. As used in this part, unless the context otherwise requires:

"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

"Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

"Nonbusiness income" means all income other than business income.

"Public utility" has the meaning given that term in section 269-1.

"Sales" means all gross receipts of the taxpayer not allocated under sections 235-24 to 235-28.

"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. [L 1967, c 33, pt of §1; HRS §235-21]

Revision Note

Numeric designations deleted.

§235-22 Taxpayers affected. Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a public utility or the rendering of purely personal services by an individual, shall allocate and apportion the taxpayer's net income as provided in this part. [L 1967, c 33, pt of §1; HRS §235-22; am imp L 1984, c 90, §1; gen ch 1985]

§235-23 Taxable in another state. For purposes of allocation and apportionment of income under this part, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not. [L 1967, c 33, pt of §1; HRS §235-23; am imp L 1984, c 90, §1; gen ch 1985]

§235-24 Specified nonbusiness income. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in sections 235-25 to 235-27. [L 1967, c 33, pt of §1; HRS §235-24]

§235-25 Rents; royalties. (a) Net rents and royalties from real property located in this State are allocable to this State.

(b) Net rents and royalties from tangible personal property are allocable to this State:

(1) If and to the extent that the property is utilized in this State, or

(2) In their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession. [L 1967, c 33, pt of §1; HRS §235-25]

§235-26 Allocation of capital gains and losses. (a) Capital gains and losses from sales of real property located in this State are allocable to this State.

(b) Capital gains and losses from sales of tangible personal property are allocable to this State if:

(1) The property had a situs in this State at the time of the sale; or

(2) The taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.

(c) Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

(d) Gain or loss from the sale of a partnership interest is allocable to this State in the ratio of the original cost of partnership tangible property in the State to the original cost of partnership tangible property everywhere, determined

at the time of the sale. If more than fifty per cent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this State in accordance with the sales factor of the partnership for its first full tax period immediately preceding its tax period during which the partnership interest was sold. [L 1967, c 33, pt of §1; HRS §235-26; am L 1989, c 19, §1]

§235-27 Allocation of interest and dividends. Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State. [L 1967, c 33, pt of §1; HRS §235-27]

§235-28 Allocation of patent and copyright royalties. (a) Patent and copyright royalties are allocable to this State:

(1) If and to the extent that the patent or copyright is utilized by the payer in this State, or

(2) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located. [L 1967, c 33, pt of §1; HRS §235-28]

§235-29 Apportionment of business income; percentage. All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. [L 1967, c 33, pt of §1; HRS §235-29]

§235-30 Apportionment; property factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. [L 1967, c 33, pt of §1; HRS §235-30]

§235-31 Apportionment; property factor; owned and used property. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. [L 1967, c 33, pt of §1; HRS §235-31]

§235-32 Apportionment; property factor; average value. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the director of taxation may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property. [L 1967, c 33, pt of §1; HRS §235-32]

§235-33 Apportionment; payroll factor. The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period. [L 1967, c 33, pt of §1; HRS §235-33]

§235-34 Compensation; where paid. Compensation is paid in this State if:

(1) The individual's service is performed entirely within the State; or

(2) The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

(3) Some of the service is performed in the State and (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State. [L 1967, c 33, pt of §1; HRS §235-34]

§235-35 Apportionment; sales factor. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. [L 1967, c 33, pt of §1; HRS §235-35]

§235-36 Apportionment; sales factor; tangible personalty. Sales of tangible personal property are in this State if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f.o.b. point or other conditions of the sale; or

(2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (A) the purchaser is the United States government or (B) the taxpayer is not taxable in the state of the purchaser. [L 1967, c 33, pt of §1; HRS §235-36]

§235-37 Apportionment; sales factor; nontangible personalty. Sales, other than sales of tangible personal property, are in this State if:

(1) The income-producing activity is performed in this State; or

(2) The income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance. [L 1967, c 33, pt of §1; HRS §235-37]

§235-38 Equitable adjustment of formula. If the allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the director of taxation may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one or more of the factors;

(3) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. [L 1967, c 33, pt of §1; HRS §235-38]

[§235-38.5] Application. It is the intent of the legislature that in administering this chapter, this part, and sections 235-4 and 235-5 or as a member of or administering the multistate tax compact under chapter 255 the department of taxation shall not use or allow the use of the worldwide method of unitary taxation upheld in Container Corporation of America v. The Franchise Tax Board, 463 U.S. 159. It is the intent of the legislature that the department of taxation shall continue to apply this chapter, part, sections 235-4 and 235-5, and chapter 255 as they were applied before the above case was decided. [L 1984, c 53, §2]

§235-39 Citation of part. This part may be cited as the "Uniform Division of Income for Tax Purposes Act". [L 1967, c 33, pt of §1; HRS §235-39]

PART III. INDIVIDUAL INCOME TAX

§235-51 Tax imposed on individuals; rates. (a) There is hereby imposed on the taxable income of (1) every taxpayer who files a joint return under section 235-93; and (2) every surviving spouse a tax determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 1988:

If the taxable income is:	The tax shall be:
Not over $3,000	2% of taxable income
Over $3,000 but not over $5,000	$60.00 plus 4% of excess over $3,000
Over $5,000 but not over $7,000	$140.00 plus 6% of excess over $5,000
Over $7,000 but not over $11,000	$260.00 plus 7.25% of excess over $7,000
Over $11,000 but not over $21,000	$550.00 plus 8% of excess over $11,000
Over $21,000 but not over $31,000	$1,350.00 plus 8.75% of excess over $21,000
Over $31,000 but not over $41,000	$2,225.00 plus 9.5% of excess over $31,000
Over $41,000	$3,175.00 plus 10% of excess over $41,000

(b) There is hereby imposed on the taxable income of every head of a household a tax determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 1988:

If the taxable income is:	The tax shall be:
Not over $1,500	2% of taxable income
Over $1,500 but not over $2,500	$30.00 plus 3% of excess over $1,500
Over $2,500 but not over $3,500	$60.00 plus 4.5% of excess over $2,500
Over $3,500 but not over $5,500	$105.00 plus 5.9% of excess over $3,500
Over $5,500 but not over $11,000	$223.00 plus 7.25% of excess over $5,500
Over $11,000 but not over $21,000	$621.75 plus 8.6% of excess over $11,000
Over $21,000 but not over $41,000	$1,481.75 plus 9.6% of excess over $21,000
Over $41,000	$3,401.75 plus 10% of excess over $41,000

(c) There is hereby imposed on the taxable income of (1) every unmarried individual (other than a surviving spouse, or the head of a household) and (2) on the taxable income of every married individual who does not make a single return jointly with the individual's spouse under section 235-93 a tax determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 1988:

If the taxable income is:	The tax shall be:
Not over $1,500	2% of taxable income
Over $1,500 but not over $2,500	$30.00 plus 4% of excess over $1,500
Over $2,500 but not over $3,500	$70.00 plus 6% of excess over $2,500
Over $3,500 but not over $5,500	$130.00 plus 7.25% of excess over $3,500
Over $5,500 but not over $10,500	$275.00 plus 8% of excess over $5,500
Over $10,500 but not over $15,500	$675.00 plus 8.75% of excess over $10,500
Over $15,500 but not over $20,500	$1,112.50 plus 9.5% of excess over $15,500
Over $20,500	$1,587.50 plus 10% of excess over $20,500

(d) The tax imposed by section 235-2.4 on estates and trusts shall be determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 1988:

If the taxable income is:	The tax shall be:
Not over $1,500	2% of taxable income
Over $1,500 but not over $2,500	$30.00 plus 4% of excess over $1,500
Over $2,500 but not over $3,500	$70.00 plus 6% of excess over $2,500
Over $3,500 but not over $5,500	$130.00 plus 7.25% of excess over $3,500
Over $5,500 but not over $10,500	$275.00 plus 8% of excess over $5,500
Over $10,500 but not over $15,500	$675.00 plus 8.75% of excess over $10,500
Over $15,500 but not over $20,500	$1,112.50 plus 9.5% of excess over $15,500
Over $20,500	$1,587.50 plus 10% of excess over $20,500

(e) Any taxpayer, other than a corporation, acting as a business entity in more than one state who is required by this chapter to file a return may elect to report and pay a tax of .5 per cent of its annual gross sales (1) where the taxpayer's

only activities in this State consist of sales; and (2) who does not own or rent real estate or tangible personal property; and (3) whose annual gross sales in or into this State during the tax year is not in excess of $100,000.

(f) If a taxpayer has a net capital gain for any taxable year to which this subsection applies, then the tax imposed by this section shall not exceed the sum of:

(1) The tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of:
   (A) The taxable income reduced by the amount of net capital gain, or
   (B) The amount of taxable income taxed at a rate below 7.25 per cent, plus
(2) A tax of 7.25 per cent of the amount of taxable income in excess of the amount determined under paragraph (1).

This subsection shall apply to individuals, estates, and trusts for taxable years beginning after December 31, 1986. [L Sp 1957, c 1, pt of §2; am L 1965, c 155, §31(b), (c); Supp, §121-8; am L 1967, c 250, §1; HRS §235-51; am L 1974, c 10, §1; am L 1978, c 173, §2(10); am L 1979, c 62, §2(9); am L 1982, c 22, §1(2); am L 1987, c 239, §1(11); am L 1988, c 102, §3; am L 1989, c 321, §3]

Law Journals and Reviews

Rule of Strict Construction in Tax Cases, a Question of Classification or Exemption, Arthur B. Reinwald, 11 HBJ 98.

Case Notes

Intangibles, situs. 31 H. 264, aff'd 47 F.2d 869.
Incidence of income taxes not proper for jury's consideration in awarding damages. 49 H. 42, 410 P.2d 976.
Statues imposing taxes are strictly construed in favor of taxpayer. 56 H. 321, 536 P.2d 91.

§235-52 Tax in case of joint return or return of surviving spouse. In the case of a joint return of a husband and wife under section 235-93, the tax imposed, as near as may be, by this chapter shall be twice the tax which would be imposed if the taxable income were cut in half. For purposes of this section and section 235-53, a return of a surviving spouse, as defined in the Internal Revenue Code, shall be treated as a joint return of a husband and wife under section 235-93. [L Sp 1957, c 1, pt of §2; Supp, §121-9; HRS §235-52; am L 1982, c 22, §1(3); am L 1987, c 239, §1(12)]

Case Notes

Joint return, joint responsibility for tax deficiency. 49 H. 688, 427 P.2d 86.

§235-53 Tax tables for individuals. (a) Imposition of tax table tax:

(1) In general. In lieu of the tax imposed by section 235-51, there is hereby imposed for each taxable year on the taxable income of every individual:
   (A) Who does not itemize the individual's deductions for the taxable year; and
   (B) Whose taxable income for such taxable year does not exceed the ceiling amount,
   a tax determined under tables, applicable to such taxable year, which shall be prescribed by the director. In the tables so prescribed, the amounts of tax shall be computed on the basis of the rates prescribed by section 235-51.
(2) Ceiling amount defined. For purposes of paragraph (1), the term "ceiling amount" means, with respect to any taxpayer, the amount (not less than $20,000) determined by the director for the tax rate category in which such taxpayer falls.
(3) Authority to prescribe tables for taxpayers who itemize deductions. The director may provide that this section shall apply also for any taxable year to individuals who itemize their deductions. Any tables prescribed under the preceding sentence shall be on the basis of taxable income.

(b) Section inapplicable to certain individuals. This section shall not apply to:

(1) An individual making a return for a period of less than twelve months on account of a change in annual accounting period, and
(2) An estate or trust.

(c) Tax treated as imposed by section 235-51. For purposes of this chapter, the tax imposed by this section shall be treated as tax imposed by section 235-51.

(d) Taxable income. Whenever it is necessary to determine the taxable income of an individual to whom this section applies, the taxable income shall be determined under section 235-2.4(a). [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-10; HRS §235-53; am L 1968, c 8, §2; am L 1977, c 46, §1; am L 1981, c 208, §3; am L 1987, c 239, §§1(13), (14)]

§235-54 Exemptions. (a) In computing the taxable income of any individual, there shall be deducted, in lieu of the personal exemptions allowed by the Internal Revenue Code, personal exemptions computed as follows: Ascertain the number of exemptions which the individual can lawfully claim under the Internal Revenue Code, add an additional exemption for the taxpayer or the taxpayer's spouse who is sixty-five years of age or older within the taxable year, and multiply that number by $1,040, for taxable years beginning after December 31, 1984. A nonresident shall be entitled to the same personal exemptions as a resident, without proration of the personal exemptions on account of income from

sources outside the State. In the case of an individual with respect to whom an exemption under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the personal exemption amount applicable to such individual under this subsection for such individual's taxable year shall be zero.

(b) In computing the taxable income of an estate or trust there shall be allowed, in lieu of the deductions allowed under subsection (a), the following:

(1) An estate shall be allowed a deduction of $400.

(2) A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $200.

(3) All other trusts shall be allowed a deduction of $80.

(c) A blind person, a deaf person and any person totally disabled, in lieu of the personal exemptions allowed by the Internal Revenue Code, shall be allowed, and there shall be deducted in computing the taxable income of a blind person, a deaf person, or a totally disabled person, instead of the exemptions provided by subsection (a), the amount of $7,000. [L Sp 1957, c 1, pt of §2; am L 1960, c 4, §1; Supp, §121-11; HRS §235-54; am L 1970, c 90, §2 and c 180, §2; am L 1978, c 181, §1; am L 1980, c 241, §2; am L 1985, c 78, §1; am L 1987, c 239, §1(15)]

Law Journals and Reviews

Rule of Strict Construction in Tax Cases, a Question of Classification or Exemption, Arthur B. Reinwald, 11 HBJ 98.

Case Notes

Statutes granting exemptions are strictly construed in favor of taxpayer. 56 H. 321, 536 P.2d 91.

§235-55 Tax credits for resident taxpayers. (a) Whenever an individual or person liable to the taxes imposed upon individuals, who is a resident of the State or who has filed a joint resident return under setion 235-93, has become liable for income taxes to a state, or to the District of Columbia, Puerto Rico, or any other territory or possession of the United States, or to a foreign country upon any part of the individual's or person's taxable income for the taxable year, derived or received from sources without the State and taxed under the laws of such other jurisdiction irrespective of the residence or domicile of the recipient, there shall be credited against the tax payable by the individual or person under this chapter the tax so paid by the individual or person to the other jurisdiction upon the individual's or person's producing for the department of taxation satisfactory evidence:

(1) Of such tax payment; and

(2) That the laws of the other jurisdiction do not allow the individual or person a credit against the taxes imposed by such jurisdiction for the taxes paid or payable under this chapter, or do allow such credit in an amount which has been deducted in computing the amount of credit sought under this section.

(b) The application of such credit, however:

(1) Shall not be allowed with respect to any taxable income or any tax which under subchapter N of chapter 1 of the Internal Revenue Code of 1954 (which is applicable for federal purposes but not for state purposes) is or may be the subject of an exclusion, exemption, or tax credit; and

(2) Shall not operate to reduce the tax payable under this chapter to an amount less than that which would have been payable had the taxpayer been taxable only on the income from property owned, personal services performed, trade or business carried on, and other sources in the State.

(c) If any taxes paid to another jurisdiction for which a taxpayer has been allowed a credit under this section are at anytime credited or refunded to the taxpayer, such fact shall be reported by the taxpayer to the department within twenty days after the credit or refund. Failure to make such report shall be deemed failure to make a return and subject to the penalties imposed by law in such cases. A tax equal to the credit allowed for the taxes so credited or refunded shall be due and payable from the taxpayer upon notice and demand from the department. If the amount of such tax is not paid within ten days from the date of the notice and demand, the taxpayer shall be subject to the usual penalties and interest for delinquency in payment.

(d) Nothing in this section shall be construed to permit a credit against the taxes imposed by this chapter on account of federal income taxes. [L Sp 1957, c 1, pt of §2; am L 1959, c 277, §9(a); am L Sp 1959 2d, c 1, §16; Supp, §121-12; HRS §235-55; am imp L 1984, c 90, §1; gen ch 1985; am L 1996, c 187, §5]

§235-55.5 REPEALED. L 1990, c 187, §2.

Cross References

For present provision, see §235-55.8.

§235-55.6 Expenses for household and dependent care services necessary for gainful employment. (a) Allowance of credit.

(1) In general. For each resident taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal

or Hawaii state individual income tax purposes, who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year. If the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of the credit over payments due shall be refunded to the resident taxpayer; provided that tax credit properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual; and provided further that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than $1.

(2) Applicable percentage defined. For purposes of paragraph (1), the term "applicable percentage" means twenty-five per cent reduced (but not below fifteen per cent) by one percentage point of each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $22,000.

(b) Definitions of qualifying individual and employment-related expenses. For purposes of this section:

(1) Qualifying individual. The term "qualifying individual" means:

(A) A dependent of the taxpayer who is under the age of thirteen and with respect to whom the taxpayer is entitled to a deduction under section 235-54(a),

(B) A dependent of the taxpayer who is physically or mentally incapable of caring for oneself, or

(C) The spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for oneself.

(2) Employment-related expenses.

(A) In general. The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are one or more qualifying individuals with respect to the taxpayer:

(i) Expenses for household services, and

(ii) Expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.

(B) Exception. Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of:

(i) A qualifying individual described in paragraph (1)(A), or

(ii) A qualifying individual (not described in paragraph (1)(A)) who regularly spends at least eight hours each day in the taxpayer's household.

(C) Dependent care centers. Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if:

(i) Such center complies with all applicable laws, rules, and regulations of this State, if the center is located within the jurisdiction of this State; or

(ii) Such center complies with all applicable laws, rules, and regulations of the jurisdiction in which the center is located, if the center is located outside the State; and

(iii) The requirements of subparagraph (B) are met.

(D) Dependent care center defined. For purposes of this paragraph, the term "dependent care center" means any facility which:

(i) Provides care for more than six individuals (other than individuals who reside at the facility), and

(ii) Receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable. The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed:

(1) $2, 400 if there is one qualifying individual with respect to the taxpayer for such taxable year, or

(2) $4, 800 if there are two or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 (with respect to dependent care assistance programs) of the Internal Revenue Code for the taxable year.

(d) Earned income limitation.

(1) In general. Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed:

(A) In the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) In the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of the individual's spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for oneself. In the case of a spouse who is a student or a qualified individual described in subsection (b)(1)(C), for purposes of paragraph (1), such

spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than:

(A) $200 if subsection (c)(1) applies for the taxable year, or

(B) $400 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) Special rules. For purposes of this section:

(1) Maintaining household. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and the individual's spouse).

(2) Married couples must file joint return. If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(3) Marital status. An individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart. If:

(A) An individual who is married and who files a separate return:

(i) Maintains as the individual's home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) Furnishes over half of the cost of maintaining such household during the taxable year, and

(B) During the last six months of such taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc. If:

(A) Paragraph (2) or (4) of section 152(e) of the Internal Revenue Code of 1954, as amended, applies to any child with respect to any calendar year; and

(B) Such child is under age thirteen or is physically or mentally incompetent of caring for the child's self; in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subsection (b)(1)(A) or (B) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1) of the Internal Revenue Code of 1954, as amended), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) Payments to related individuals. No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual:

(A) With respect to whom, for the taxable year, a deduction under section 151(c) of the Internal Revenue Code of 1954, as amended (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or the taxpayer's spouse, or

(B) Who is a child of the taxpayer (within the meaning of section 151(c)(3) of the Internal Revenue Code of 1954, as amended) who has not attained the age of nineteen at the close of the taxable year. For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(7) Student. The term "student" means an individual who during each of five calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization. The term "educational organization" means a school operated by the department of education or licensed under chapter 298, or a university, college, or community college.

(9) Identifying information required with respect to service provider. No credit shall be allowed under subsection (a) for any amount paid to any person unless:

(A) The name, address, taxpayer identification number, and general excise tax license number of such person are included on the return claiming the credit,

(B)

If the person is located outside the State, the name, address, and taxpayer identification number, if any, of the person and a statement indicating that the service provider is located outside the State and that the general excise tax license and, if applicable, the taxpayer identification numbers are not required, or

(C) If such person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(f) Rules. The director of taxation shall prescribe such rules under chapter 91 as may be necessary to carry out the purposes of this section. [L 1977, c 196, §2; am L 1979, c 62, §2(10); am L 1981, c 234, §1; am L 1982, c 25, §3;

am imp L 1984, c 90, §1; gen ch 1985; am L 1985, c 19, §2; am L 1987, c 239, §1(16); am L 1988, c 102, §4; am L 1989, c 13, §5, c 321, §4 and c 322, §1; am L 1993, c 73, §§2, 3]

§235-55.7 Income tax credit for low-income household renters. (a) As used in this section:

(1) "Adjusted gross income" is defined by section 235-1.

(2) "Qualified exemption" includes those exemptions permitted under this chapter; provided that a person for whom exemption is claimed has physically resided in the State for more than nine months during the taxable year; and provided that multiple exemption shall not be granted because of deficiencies in vision, hearing, or other disability.

(3) "Rent" means the amount paid in cash in any taxable year for the occupancy of a dwelling place which is used by a resident taxpayer or the resident taxpayer's immediate family as the principal residence in this State. Rent is limited to the amount paid for the occupancy of the dwelling place only, and is exclusive of charges for utilities, parking stalls, storage of goods, yard services, furniture, furnishings, and the like. Rent shall not include any rental claimed as a deduction from gross income or adjusted gross income for income tax purposes, any ground rental paid for use of land only, and any rent allowance or subsidies received.

(b) Each resident taxpayer who occupies and pays rent for real property within the State as the resident taxpayer's residence or the residence of the resident taxpayer's immediate family which is not partially or wholly exempted from real property tax, who is not eligible to be claimed as a dependent for federal or state income taxes by another, and who files an individual net income tax return for a taxable year, may claim a tax credit under this section against the resident taxpayer's Hawaii state individual net income tax.

(c) Each taxpayer with an adjusted gross income of less than $30,000 who has paid more than $1,000 in rent during the taxable year for which the credit is claimed may claim a tax credit of $50 multiplied by the number of qualified exemptions to which the taxpayer is entitled; provided each taxpayer sixty-five years of age or over may claim double the tax credit; and provided that a resident individual who has no income or no income taxable under this chapter may also claim the tax credit as set forth in this section.

(d) If a rental unit is occupied by two or more individuals, and more than one individual is able to qualify as a claimant, the claim for credit shall be based upon a pro rata share of the rent paid.

(e) The tax credits shall be deductible from the taxpayer's individual net income tax for the tax year in which the credits are properly claimed; provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been made by them shall claim only the tax credits to which they would have been entitled had a joint return been filed. In the event the allowed tax credits exceed the amount of the income tax payments due from the taxpayer, the excess of credits over payments due shall be refunded to the taxpayer; provided that allowed tax credits properly claimed by an individual who has no income tax liability shall be paid to the individual; and provided further that no refunds or payments on account of the tax credits allowed by this section shall be made for amounts less than $1.

(f) The director of taxation shall prepare and prescribe the appropriate form or forms to be used herein, may require proof of the claim for tax credits, and may adopt rules pursuant to chapter 91.

(g) All of the provisions relating to assessments and refunds under this chapter and under section 231-23(d)(1) shall apply to the tax credits hereunder.

(h) Claims for tax credits under this section, including any amended claims thereof, shall be filed on or before the end of the twelfth month following the taxable year for which the credit may be claimed. [L Sp 1977 1st, c 15, §1; am L 1981, c 230, §1; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 321, §5; am L 1990, c 98, §1]

Revision Note

In subsection (g), "231-23(c)(1)" substituted for "231-23(d)(1)".

Cross References

For additional tax credits, see §§235-110.6, 110.7, 110.8.

§235-55.8 Food tax credit. (a) Each resident individual taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, may claim a food tax credit against the resident taxpayer's individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that a resident individual who has no income or no income taxable under this chapter and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes may claim this credit.

(b) Each resident individual taxpayer may claim a tax credit of $27 multiplied by the number of qualified exemptions to which the taxpayer is entitled; provided that no additional tax credit shall be claimed because of age; provided further that a husband and wife filing separate tax returns may each claim a $27 tax credit.

(c) For the purposes of this section, a qualified exemption is defined to include those exemptions permitted under this chapter; provided that a person for whom exemption is claimed has physically resided in the State for more than nine months during the taxable year; and provided further that multiple exemptions shall not be granted because of

deficiencies in vision or hearing, or other disability. For purposes of claiming the credit only, a minor child receiving support from the department of human services of the State, social security survivor's benefits, and the like, may be considered a dependent and a qualified exemption of the parent or guardian.

(d) The tax credit under this section shall not be available to (1) any person who has been convicted of a felony and who has been committed to prison and has been physically confined for the full taxable year; (2) any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or (3) any misdemeanant who has been committed to jail and has been physically confined for the full taxable year.

(e) The tax credits claimed by a resident taxpayer pursuant to this section shall be deductible from the resident taxpayer's individual income tax liability, if any, for the tax year in which they are properly claimed. If the tax credits claimed by a resident taxpayer exceed the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that tax credits properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual; and provided further that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than $1.

(f) All claims for tax credits under this section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit. [L 1987, c 239, §1(1); am L 1988, c 141, §20; am L 1990, c 187, §1; am L 1995, c 134, §1]

Note

Tax credit of $1. L 1995, c 93, §2.
The 1995 amendment applies to taxable years beginning after December 31, 1994. L 1995, c 134, §4.

§235-55.9 Medical services excise tax credit. (a) Each resident individual taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for Hawaii state individual income tax purposes, may claim a medical services excise tax credit against the resident taxpayer's individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that a resident individual who has no income or no income taxable under this chapter and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for Hawaii state individual income tax purposes may claim this credit.

(b) The medical services excise tax credit shall be six per cent of the nursing facilities expenses paid by or for the resident individual during the taxable year.

(c) For the purposes of this section "nursing facility expenses" are amounts actually paid by the taxpayer for services provided to the taxpayer or to any individual who bears a relationship to the taxpayer as described in section 152(a) (with respect to dependent defined) of the Internal Revenue Code by a nursing facility licensed under section 321-9 and 321-11 and any intermediate care facility for mentally retarded persons under sections 321-9 and 321-11; provided that the nursing facility expense was subject to the imposition and payment of the tax imposed by chapter 346E.

The amount of nursing facility expenses paid during the taxable year shall not be reduced by any insurance reimbursement.

(d) The tax credits claimed by a resident taxpayer pursuant to this section shall be deductible from the resident taxpayer's individual income tax liability, if any, for the tax year in which they are properly claimed. If the tax credits claimed by a resident taxpayer exceed the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that tax credits properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual; and provided further that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than $1.

(e) The director of taxation shall prepare such forms as may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish reasonable information in order that the director may ascertain the validity of the claim for credit made under this section and the director may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(f) All claims for tax credits under this section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(g) This section shall not be effective after June 30, 1997. [L 1989, c 321, §1; am L 1991, c 217, §1; am L 1992, c 235, §§4, 5; am L 1993, c 220, §1 and c 315, §3, 4; am L 1995, c 134, §2 as superceded by L Sp 1995, c 23, §§1, 2]

Note

L Sp 1995 amendment applies to taxable years beginning after December 31, 1994. L Sp 1995, c 23, §4.

§235-55.91 Credit for employment of vocational rehabilitation referrals. [*Amendment retroactive to October 1, 1990.*] (a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter, a credit for employment

of vocational rehabilitation referrals which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(b) The amount of the credit determined under this section for the taxable year shall be equal to twenty per cent of the qualified first-year wages for that year. The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed $6,000.

(c) For purposes of this section:

"Hiring date" means the day the vocational rehabilitation referral is hired by the employer.

"Qualified first-year wages" means, with respect to any vocational rehabilitation referral, qualified wages attributable to service rendered during the one-year period beginning with the day the individual begins work for the employer.

"Qualified wages" means the wages paid or incurred by the employer during the taxable year to an individual who is a vocational rehabilitation referral and more than one-half of the wages paid or incurred for such an individual is for services performed in a trade or business of the employer.

"Vocational rehabilitation referral" means any individual who is certified by the department of human services vocational rehabilitation and services for the blind division in consultation with the Hawaii state employment service of the department of labor and industrial relations as:

(1) Having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment; and

(2) Having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to:

(A) An individualized written rehabilitation plan under the State's plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, as amended; or

(B) A program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

"Wages" has the meaning given to such term by section 3306(b) of the Internal Revenue Code (determined without regard to any dollar limitation contained in the Internal Revenue Code section). "Wages" shall not include:

(1) Amounts paid or incurred by an employer for any period to any vocational rehabilitation referral for whom the employer receives state or federally funded payments for on-the-job training of the individual for the period;

(2) Amounts paid to an employer (however utilized by the employer) for any vocational rehabilitation referral under a program established under section 414 of the Social Security Act; and

(3) If the principal place of employment is at a plant or facility, and there is a strike or lockout involving vocational rehabilitation referrals at the plant or facility, amounts paid or incurred by the employer to the vocational rehabilitation referral for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of strike or lockout.

(d) The following shall apply to certifications of vocational rehabilitation referrals:

(1) An individual shall not be treated as a vocational rehabilitation referral unless, on or before the day on which the individual begins work for the employer, the employer:

(A) Has received a certification from the department of human services vocational rehabilitation and services for the blind division that the individual is a qualified vocational rehabilitation referral; or

(B) Has requested in writing the certification from the department of human services vocational rehabilitation and services for the blind division that the individual is a qualified vocational rehabilitation referral.

For purposes of the preceding sentence, if on or before the day on which the individual begins work for the employer, the individual has received from the department of human services vocational rehabilitation and services for the blind division a written preliminary determination that the individual is a vocational rehabilitation referral, then "the fifth day" shall be substituted for "the day" in the preceding sentence.

(2) If an individual has been certified as a vocational rehabilitation referral and the certification is incorrect because it was based on false information provided by the individual, the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

(3) In any request for a certification of an individual as a vocational rehabilitation referral, the employer shall certify that a good faith effort was made to determine that such individual is a vocational rehabilitation referral.

(e) The following wages paid to vocational rehabilitation referrals are ineligible to be claimed by the employer for this credit:

(1) No wages shall be taken into account under this section with respect to a vocational rehabilitation referral who:

(A) Bears any of the relationships described in section 152(a)(1) to (8) of the Internal Revenue Code to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly,

more than fifty per cent in value of the outstanding stock of the corporation (determined with the application of section 267(c) of the Internal Revenue Code);

(B) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in section 152(a)(1) to (8) of the Internal Revenue Code to a grantor, beneficiary, or fiduciary of the estate or trust; or

(C) Is a dependent (described in section 152(a)(9) of the Internal Revenue Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(2) No wages shall be taken into account under this section with respect to any vocational rehabilitation referral if, prior to the hiring date of the individual, the individual had been employed by the employer at any time during which the individual was not a vocational rehabilitation referral.

(3) No wages shall be taken into account under this section with respect to any vocational rehabilitation referral unless such individual either:

(A) Is employed by the employer at least ninety days; or

(B) Has completed at least one hundred-twenty hours of services performed for the employer.

(f) In the case of a successor employer referred to in section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the tax credit allowable under this section with respect to wages paid by the successor employer shall be made in the same manner as if the wages were paid by the predecessor employer referred to in the section.

(g) No credit shall be determined under this section with respect to wages paid by an employer to a vocational rehabilitation referral for services performed by the individual for another person unless the amount reasonably expected to be received by the employer for the services from the other person exceeds the wages paid by the employer to the individual for such services.

(h) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

(i) All claims for tax credits under this section, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(j) No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year that is equal to the amount of the credit determined under this section.

(k) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section. [L 1990, c 289, §1; am L 1991, c 137, §1]

§§235-56, 56.5, and 57 REPEALED. L 1974, c 221, §§1(2), (3), and (4).

§§235-58, 58.1, and 58.2 REPEALED. L 1978, c 173, §2(11).

§235-59 Decedents. In respect of a decedent, the determination of the income of the taxable period in which falls the date of the decedent's death, and the determination of the income of the estate and of the persons who acquire rights from the decedent or by reason of the decedent's death, shall be governed by the Internal Revenue Code. [L Sp 1957, c 1, pt of §2; Supp, §121-14; HRS §235-59; am imp L 1984, c 90, §1; gen ch 1985]

§235-60 REPEALED. L 1978, c 173, §2(12).

WITHHOLDING AND COLLECTION OF TAX AT SOURCE

§235-61 Withholding of tax on wages. (a) As used in this section:

(1) "Wages" means wages, commissions, fees, salaries, bonuses, and every and all other kinds of remuneration for, or compensation attributable to, services performed by an employee for the employee's employer, including the cash value of all remuneration paid in any medium other than cash and the cost-of-living allowances and other payments included in gross income by section 235-7(b), but excluding income excluded from gross income by section 235-7 or other provisions of this chapter;

(2) "Employee" includes an officer or elected official, or any other employee;

(3) "Employer" means (A) the person or government for whom an individual performs or performed any service, of whatever nature, as the employee of such person or government, and (B) the person having control of the payment of the wages if the employer as heretofore defined does not have control thereof, and (C) any person subject to the jurisdiction of the State and paying wages on behalf of an employer as heretofore defined if the employer is not subject to the jurisdiction of the State; provided that the term

employer shall not include any government that is not subject to the laws of the State except as, and to the extent that, it consents to the application of sections 235-61 to 235-67 to it.

(b) Every employer, as defined herein, making payment of wages, as herein defined, to employees, shall deduct and withhold from such wages an amount of tax determined as provided in this section.

(c) For each withholding period (whether weekly, biweekly, monthly, or otherwise) the amount of tax to be withheld under this section shall be at a rate which, for the taxable year, will yield the tax imposed by section 235-51 upon each employee's annual wage, as estimated from the employee's current wage in any withholding period, but (for the purposes of this subsection of the rates provided by section 235-51) the maximum to be taken into consideration shall be eight per cent. The tax for the taxable year shall be calculated upon the following assumptions:

(1) That the employee's annual wage, as estimated from the employee's current wage in the withholding period, will be the employee's sole income for the taxable year;

(2) That there will be no deductions therefrom in determining adjusted gross income;

(3) That in determining taxable income there shall be a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the director) unless (A) the taxpayer is married and the taxpayer's spouse is an employee receiving wages subject to withholding, or (B) the taxpayer has withholding exemption certificates in effect with respect to more than one employer. For the purposes of this section, any standard deduction allowance under this paragraph shall be treated as if it were denominated a withholding exemption;

(4) That in determining taxable income there also will be deducted the amount of exemptions and withholding allowances granted to the employee in the computation of taxable income, as shown by a certificate to be filed with the employer as provided by subsection (f); and

(5) If it appears from the certificate filed pursuant to subsection (f) that the employee, under section 235-93, is entitled to make a joint return, that the employee and the employee's spouse will so elect.

(d) Alternatively, at the election of the employer, the employer may deduct and withhold from each employee an amount of tax determined on the basis of tables to be prepared and furnished by the department of taxation, which amount of tax shall be substantially equivalent to the amount of tax provided by subsection (c) hereof.

(e) The department, by rule, may require the deduction and withholding of tax from any remuneration or compensation paid for or attributable to services that are not subject to the general excise tax imposed by chapter 237, whether or not such withholding is provided for hereinabove. Every person so required to deduct and withhold tax, or from whom tax is required to be deducted and withheld, shall be subject to sections 235-61 to 235-67, and every person so required to deduct and withhold tax shall be deemed an employer for the purposes of this chapter.

The department, by rule, may exempt any employer from the requirement of deduction and withholding of taxes, even though the requirement is imposed by this section, if and to the extent that the department finds the requirement unduly onerous or impracticable of enforcement.

(f) On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed certificate relating to the number of exemptions which the employee claims, which shall in no event exceed the number to which the employee is entitled on the basis of the existing facts, and also showing whether the employee is married and is, under section 235-93, entitled to make a joint return. The certificate shall be in such form and contain such information as may be prescribed by the department.

If, on any day during the calendar year, there is a change in the employee's marital status and the employee no longer is entitled to make a joint return, or the number of exemptions to which the employee is entitled is less than the number of exemptions claimed by the employee on the certificate then in effect with respect to the employee, the employee shall within ten days thereafter furnish the employer with a new certificate showing the employee's present marital status, or relating to the number of exemptions which the employee then claims, which shall in no event exceed the number to which the employee is entitled on the basis of the existing facts. If, on any day during the calendar year, there is a change in the employee's marital status and though previously not entitled to make a joint return the employee now is so entitled, or the number of exemptions to which the employee is entitled is greater than the number of exemptions claimed, the employee may furnish the employer with a new certificate showing the employee's present marital status, or relating to the number of exemptions which the employee then claims, which shall in no event exceed the number to which the employee is entitled on the basis of the existing facts.

Such certificate shall take effect at the times set forth in the Internal Revenue Code.

(g) In determining the deduction allowed by subsection (c)(4) an employee shall be entitled to withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by rules) estimated itemized deductions and tax credits allowable under this chapter; and such additional deductions and other items as may be specified by the director in rules. For the purposes of this subsection a fractional number shall not be taken into account unless it amounts to one-half or more, in which case it shall be increased to the next whole number.

(1) As used in this subsection, unless the context otherwise requires:

(A) "Estimated itemized deductions" means the aggregate amount which the employee reasonably expects will be allowed as deductions under sections 235-2.3, 235-2.4, and 235-7, other than the deductions referred to in Internal Revenue Code section 151 and those deductions required to be taken into account in determining adjusted gross income under Internal Revenue Code section 62(a) (with the exception of paragraph 10 thereof) for the estimation year. In no case shall the aggregate amount be greater than the sum of:

(i) The amount of the deductions reflected in the employee's net income tax return for the taxable year preceding the estimation year of (if the a return has not been filed for the preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year; or

(ii) The amount of estimated itemized deductions and tax credits allowable under this chapter and any additional deductions to which entitled; and

(iii) The amount of the employee's determinable additional deductions for the estimation year.

(B) "Estimated wages" means the aggregate amount which the employee reasonably expects will constitute wages for the estimation year;

(C) "Determinable additional deductions" means those estimated itemized deductions which:

(i) Are in excess of the deductions referred to in subparagraph (A) reflected on the employee's net income tax return for the taxable year preceding the estimation year; and

(ii) Are demonstrably attributable to an identifiable event during the estimation year or the preceding taxable year which can reasonably be expected to cause an increase in the amount of such deductions on the net income tax return for the estimation year.

(D) "Estimation year", in the case of an employee who files the employee's return on the basis of a calendar year, means the calendar year in which the wages are paid; provided that in the case of an employee who files the employee's return on a basis other than the calendar year, the employee's estimation year, and the amounts deducted and withheld to be governed by the estimation year, shall be determined under rules prescribed by the director of taxation.

(2) Under this subsection, the following special rules shall apply:

(A) Married individuals. The number of withholding allowances to which a husband and wife are entitled under this subsection shall be determined on the basis of their combined wages and deductions. This subparagraph shall not apply to a husband and wife who filed separate returns for the taxable year preceding the estimation year and who reasonably expect to file separate returns for the estimation year;

(B) Limitation. In the case of employees whose estimated wages are at levels at which the amounts deducted and withheld under this chapter generally are insufficient (taking into account a reasonable allowance for deductions and exceptions) to offset the liability for tax under this chapter with respect to the wages from which the amounts are deducted and withheld, the director may by rule reduce the withholding allowances to which those employees would, but for this subparagraph, be entitled under this subsection;

(C) Treatment of allowances. For purposes of this chapter, any withholding allowance under this subsection shall be treated as if it were denominated a withholding exemption.

(3) The director may prescribe tables by rule under chapter 91 pursuant to which employees shall determine the number of withholding allowances to which they are entitled under this subsection.

(h) The director of taxation may adopt by rule under chapter 91 the rules and regulations promulgated by the United States Secretary of Treasury or a delegate of the Secretary relating to the provisions of subtitle C, chapter 24 of the Internal Revenue Code operative in this section. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; am L 1965, c 155, §31(d); Supp, §121-16; HRS §235-61; am L 1981, c 138, §1; am L 1982, c 23, §1; am L 1983, c 206, §2; am imp L 1984, c 90, §1; gen ch 1985; am L 1987, c 239, §§1(17), (18); am L 1993, c 73, §4; am L 1995, c 92, §7; am L 1996, c 187, §6]

§235-62 Return and payment of withheld taxes. Every employer required by this chapter to withhold taxes on wages paid in any month shall make a return of such wages to the department of taxation on or before the fifteenth day of the calendar month following the month for which the taxes have been withheld; provided that each employer required to make a return under this section whose liability for taxes withheld exceeds $100,000 a year, shall make a return of wages and taxes withheld to the department on or before the tenth day of the calendar month following the month for which the taxes have been withheld. The return shall be in such form, including computer printouts and the like, and contain such information as may be prescribed by the director of taxation. The return shall be filed with the collector of the taxation district in which the employer has the employer's principal place of business or with the director at Honolulu if the employer has no place of business in the State. Every return required under this section shall be accompanied by a remission of the complete amount of tax withheld, as reported in the return. If the director believes collection of the tax may be in jeopardy, the director may require any person required to make a return under this section

to make such return and pay such tax at any time. The director may grant permission to employers, whose liability to pay over the taxes withheld as provided in this section shall not exceed $1,000 a year, to make returns and payments of the taxes due on a quarterly basis during the calendar year, the returns and payments to be made on or before the fifteenth day of the calendar month after the close of each quarter, to wit, on or before April 15, July 15, October 15, and January 15. The director may grant permission to employers to make monthly payments based on an estimated quarterly liability; provided that the employer files a reconciliation return on or before the fifteenth day of the calendar month after the close of each quarter during the calendar year as provided by this section.The director, for good cause, may extend the time for making returns and payments, but not beyond the fifteenth day of the second month following the regular due date of the return. With respect to wages paid out of public moneys, the director, in the director's discretion, may prescribe special forms for, and different procedures and times for the filing of, the returns by employers paying the wages, or may waive the filing of any returns upon the conditions and subject to rules the director may prescribe. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; am L 1964, c 24, §2; Supp, §121-17; am L 1966, c 19, §3; am L 1967, c 26, §2 and c 37, §1; HRS §235-62; am L 1970, c 37, §2; am L 1980, c 211, §2; am L 1981, c 138, §2; am imp L 1984, c 90, §1; gen ch 1985; am L 1992, c 38, §1]

§235-63 Statements to employees. Every employer required to deduct and withhold any tax on the wages of any employee shall furnish to each employee in respect of the employee's employment during the calendar year, on or before January 31 of the succeeding year, or if the employee's employment is terminated before the close of a calendar year, within thirty days after the date of receipt of a written request from the employee if such thirty-day period ends before January 31, a written statement, showing the period covered by the statement, the wages paid by the employer to the employee during such period, and the amount of the tax deducted and withheld or paid in respect of such wages. Each such employer shall file on or before the last day of February following the close of the calendar year a duplicate copy of each such statement. The department of taxation may grant to any employer a reasonable extension of time, not in excess of sixty days, with respect to any statement required by this section to be furnished to an employee or filed, and may by regulation provide for the furnishing or filing of statements at such other times and containing such other information as may be required for the administration of this chapter. The department shall prescribe the form of the statement required by this section and may adopt any federal form appropriate for the purpose. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-18; HRS §235-63; am L 1980, c 236, §1; am L 1983, c 88, §3; am imp L 1984, c 90, §1; gen ch 1985]

§235-64 Taxes withheld by employer held in trust; employer's liability. (a) All taxes withheld by any employer under section 235-61 shall be held in trust by the employer for the State and for the payment of the same to the collector in the manner and at the time required by this chapter. If any employer fails, neglects, or refuses to deduct and withhold from the wages paid to an employee, or to pay over, the amount of tax required, the employer shall be liable to pay to the State the amount of the tax. An employer may recover from an employee any amount which the employer should have withheld but did not withhold from the employee's wages, if the employer has been required to pay and has paid the amount to the State out of the employer's own funds pursuant to this section.

(b) In addition to the liability imposed by subsection (a) if any employer which is a corporation fails, neglects, or refuses to deduct and withhold from the wages paid to any employee, or to pay over, the amount of tax required, any person or corporate officer excluding those who have only ministerial duties, who is under a duty to the corporation to deduct and withhold or to pay over, the amount of tax required, and who wilfully fails to perform such duty, shall be liable to the State for the amount of the tax. The liability may be assessed and collected in the same manner as the liability imposed by subsection (a); provided that two or more persons may be assessed under this subsection jointly or in the alternative, but the tax shall be collected only once with respect to the same wages. The voluntary or involuntary dissolution of the corporation, or the withdrawal and surrender of its right to engage in business within this State shall not discharge the liability hereby imposed. [L Sp 1957, c 1, pt of §2; am L 1959, c 277, §11; Supp, §121-19; HRS §235-64; am L 1974, c 11, §1; am imp L 1984, c 90, §1; gen ch 1985; am L 1990, c 82, §1]

§235-65 REPEALED. L 1995, c 92, §22.

§235-66 Further withholdings at source; crediting of withheld taxes. (a) The department of taxation by regulation, may require the deduction and withholding of tax from any gross income or adjusted gross income of a nonresident, in order to collect the tax imposed by this chapter on the nonresident.

(b) Income upon which any tax has been withheld at the source under sections 235-61 to 235-64, or under regulations adopted pursuant to subsection (a), shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in the return, and if in excess of the tax due for the taxable year shall be refunded as provided in section 235-110. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-21; HRS §235-66]

§235-67 Indemnity of withholder. Every person required to withhold a tax under sections 235-61 to 235-64, or under regulations adopted pursuant to section 235-66(a), is made liable for such tax and is relieved of liability for or upon the claim or demand of any other person for the amount of any payments to the department of taxation made in accordance with such sections. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-22; HRS §235-67]

§235-68 Withholding of tax on the disposition of real property by nonresident persons. (a) As used in this section:

"Nonresident person" means every person other than a resident person.

"Property" or "real property" has the meaning as the same term is defined in section 231-1.

"Resident person" means any individual included in the definition of resident in section 235-1; any corporation incorporated or granted a certificate of authority under chapter 415, 415A, or 415B; any partnership formed or registered under chapter 425 or 425D; any foreign partnership qualified to transact business pursuant to chapter 425 or 425D; or any trust included in the definition of resident trust in section 235-1; or any estate included in the definition of resident estate in section 235-1.

"Transferee" means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

"Transferor" means any person disposing real property which is located in Hawaii.

(b) Unless otherwise provided in this section, every transferee shall deduct and withhold a tax equal to five per cent of the amount realized on the disposition of Hawaii real property. Every person required to withhold a tax under this section is made liable for the tax and is relieved of liability for or upon the claim or demand of any other person for the amount of any payments to the department made in accordance with this section.

(c) Every transferee required by this section to withhold tax under subsection (b) shall make a return of the amount withheld to the department of taxation not more than twenty days following the transfer date.

(d) No person shall be required to deduct and withhold any amount under subsection (b), if the transferor furnishes to the transferee an affidavit by the transferor stating the transferor's taxpayer identification number and:

(1) The transferor is a resident person; or
(2) That by reason of a nonrecognition provision of the Internal Revenue Code as operative under this chapter or the provisions of any United States treaty, the transferor is not required to recognize any gain or loss with respect to the transfer;
(3) A brief description of the transfer; and
(4) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer. This subsection shall not apply if the transferee has actual knowledge that the affidavit referred to in this subsection is false.

(e) An application for a withholding certificate may be submitted by the transferor to the department setting forth:

(1) The name, address, and taxpayer identification number, if any, of the parties to the transaction and the location and general description of the real property to be transferred; and
(2) A calculation and written justification showing that the transferor will not realize any gain with respect to the transfer; or
(3) A calculation and written justification showing that there will be insufficient proceeds to pay the withholding required under subsection (b) after payment of all costs, including selling expenses and the amount of any mortgage or lien secured by the property.

Upon receipt of the application, the department shall determine whether the transferor has realized or will realize any gain with respect to the transfer, or whether there will be insufficient proceeds to pay the withholding. If the department is satisfied that no gain will be realized or that there will be insufficient proceeds to pay the withholding, it shall issue a withholding certificate stating the amount to be withheld, if any.

The submission of an application for a withholding certificate to the department does not relieve the transferee of its obligation to withhold or to make a return of the tax under subsections (b) and (c).

(f) No person shall be required to deduct and withhold any amount under subsection (b) if one or more individual transferors furnishes to the transferee an affidavit by the transferor stating the transferor's taxpayer identification number, that for the year preceding the date of the transfer the property has been used by the transferor as a principal residence, and that the amount realized for the property does not exceed $300,000.

(g) The department may enter into written agreements with persons who engage in more than one real property transaction in a calendar year or other persons to whom meeting the withholding requirements of this section are not practicable. The written agreements may allow the use of a withholding method other than that prescribed by this section or may waive the withholding requirement under this section. [L 1990, c 213, §1; am L 1991, c 279, §1; am L 1995, c 92, §8]

235-(new) Voluntary deduction and withholding of state income tax from unemployment compensation. An individual receiving unemployment compensation benefits under chapter 383 may elect to have state income tax

deducted and withheld from the individual's payment of unemployment compensation at the rate of five percent in accordance with section 383-___. [L 1996, c 157, § 1]

PART IV. CORPORATION INCOME TAX

§235-71 Tax on corporations; rates; credit of shareholder of regulated investment company. (a) A tax at the rates herein provided shall be assessed, levied, collected, and paid for each taxable year on the taxable income of every corporation, including a corporation carrying on business in partnership, except that in the case of a regulated investment company the tax is as provided by subsection (b) and further that in the case of a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1954 the tax is as provided in subsection (d). "Corporation" includes any professional corporation incorporated pursuant to chapter 415A.

The tax on all taxable income shall be at the rate of 4.4 per cent if the taxable income is not over $25,000, 5.4 per cent if over $25,000 but not over $100,000, and on all over $100,000, 6.4 per cent.

(b) In the case of a regulated investment company there is imposed on the taxable income, computed as provided in sections 852 and 855 of the Internal Revenue Code but with the changes and adjustments made by this chapter (without prejudice to the generality of the foregoing, the deduction for dividends paid is limited to such amount of dividends as is attributable to income taxable under this chapter), a tax consisting in the sum of the following: 4.4 per cent if the taxable income is not over $25,000, 5.4 per cent if over $25,000 but not over $100,000, and on all over $100,000, 6.4 per cent.

(c) In the case of a shareholder of a regulated investment company there is hereby allowed a credit in the amount of the tax imposed on the amount of capital gains which by section 852(b)(3)(D) of the Internal Revenue Code is required to be included in the shareholder's return and on which there has been paid to the State by the regulated investment company the tax at the rate imposed by subsection (b); the amount of this credit may be applied or refunded as provided in section 235-110.

(d) In the case of a real estate investment trust there is imposed on the taxable income, computed as provided in sections 857 and 858 of the Internal Revenue Code but with the changes and adjustments made by this chapter (without prejudice to the generality of the foregoing, the deduction for dividends paid is limited to such amount of dividends as is attributable to income taxable under this chapter), a tax consisting in the sum of the following: 4.4 per cent if the taxable income is not over $25,000, 5.4 per cent if over $25,000 but not over $100,000, and on all over $100,000, 6.4 per cent. In addition to any other penalty provided by law any real estate investment trust whose tax liability for any taxable year is deemed to be increased pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after December 31, 1978, (relating to interest and additions to tax determined with respect to the amount of the deduction for deficiency dividends allowed) of the Internal Revenue Code shall pay a penalty in an amount equal to the amount of interest for which such trust is liable that is attributable solely to such increase. The penalty payable under this subsection with respect to any determination shall not exceed one-half of the amount of the deduction allowed by section 859(a), or 860(a) after December 31, 1978, of the Internal Revenue Code for such taxable year.

(e) Any corporation acting as a business entity in more than one state and which is required by this chapter to file a return and whose only activities in this State consist of sales and which does not own or rent real estate or tangible personal property and whose annual gross sales in or into this State during the tax year are not in excess of $100,000 may elect to report and pay a tax of .5 per cent of such annual gross sales. [L Sp 1957, c 1, pt of §2; am L 1965, c 155, §§10, 11, 12 and c 201, §6; Supp, §121-23; HRS §235-71; am L 1969, c 226, §5; am L 1974, c 10, §2; am L 1978, c 173, §2(13); am L 1979, c 62, §2(11); am L 1983, c 167, §18; am L 1985, c 270, §4; am L 1987, c 239, §1(19); am L 1988, c 10, §§1(3), (4)]

Cross References

Professional corporation, see chapter 415A.

[§235-71.5] Alternative tax for corporations. Section 1201 (with respect to alternative tax for corporations) of the Internal Revenue Code shall be operative for the purposes of this chapter and shall be applied as set forth in this section. If for any taxable year a corporation, regulated investment company, or real estate investment trust has a net capital gain, then, in lieu of the tax imposed by section 235-71, there is hereby imposed a tax (if such tax is less than the tax imposed under section 235-71) which shall consist of the sum of:

(1) A tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this section had not been enacted, plus

(2) The sum of:

(A) 3.08 per cent of the lesser of:

(i) The net capital gain determined by including only the gain or loss which is properly taken into account for the portion of the taxable year before April 1, 1987 (i.e., the amount in paragraph (1)), or

(ii) The net capital gain for the taxable year, plus

(B) 4 per cent of the excess (if any) of:
(i) The net capital gain for the taxable year, over
(ii) The amount of the net capital gain taken into account under subparagraph (A). [L 1988, c 10, §1(1)]

§235-72 Corporations carrying on business in partnership. Corporations carrying on business in partnership shall be treated in the same manner by this chapter as they are treated by the Internal Revenue Code. [L Sp 1957, c 1, pt of §2; Supp, §121-24; HRS §235-72; am L 1978, c 173, §2(14)]

PART V. ELECTION BY SMALL BUSINESS CORPORATION

§§235-81 to 89 REPEALED. L 1978, c 173, §2(15).

PART VI. RETURNS AND PAYMENTS; ADMINISTRATION

§235-91 REPEALED. L 1978, c 173, §2(16).

§235-92 Returns, who shall make. For each taxable year, returns shall be made by the following persons to the department of taxation in such form and manner as it shall prescribe:

(1) Every person doing business in the State during the taxable year, whether or not the person derives any taxable income therefrom. As used in this paragraph "doing business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, except personal services performed as an employee under the direction and control of an employer. Every person receiving rents from property owned in the State is classed as "doing business" and shall make a return whether or not the person derives taxable income therefrom.
(2) Every corporation having for the taxable year gross income subject to taxation under this chapter; provided that an affiliated group of domestic corporations may make and file a consolidated return for the taxable year in lieu of separate tax returns in the manner and to the extent, so far as applicable, set forth in sections 1501 through 1505 and 1552 of the Internal Revenue Code of 1954, as amended.
(3) Every individual, estate, or trust having for the taxable year gross income subject to taxation under this chapter, except as exempted from the filing of a return by regulations of the department.

The department may by regulation excuse the filing of a return by an individual, estate, or trust in cases not coming within paragraph (1), where the gross income and exemptions are such that no tax is expected to accrue under this chapter, or are such that substantially all the tax will have been collected through tax withholdings or at the source. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-26; HRS §235-92; am L 1968, c 24, §2; am L 1978, c 173, §2(17); am imp L 1984, c 90, §1; gen ch 1985]

§235-93 Joint returns. A husband and wife, having that status for purposes of the Internal Revenue Code and entitled to make a joint federal return for the taxable year, may make a single return jointly of taxes under this chapter for the taxable year. In that case the tax shall be computed on their aggregate income as provided in section 235-52, and the liability with respect to the tax shall be joint and several. For purposes of this chapter "aggregate income" means the income of both spouses without regard to source in the State.

If an individual has filed a separate return for a taxable year for which a joint return could have been made by the taxpayer and the taxpayer's spouse, an election thereafter to make a joint return for the taxable year shall be made only upon compliance with rules of the department of taxation, which may limit the election and prescribe the terms and provisions applicable in such cases as nearly as may be in conformity with the Internal Revenue Code. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-27; HRS §235-93; am L 1974, c 9, §2; am L 1982, c 22, §1(4)]

[§235-93.5] Innocent spouse relieved of liability in certain cases. (a) If a husband and wife have made a joint return under this chapter for a taxable year, and:

(1) On the return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,
(2) The innocent spouse establishes that in signing the return the innocent spouse did not know, and had no reason to know, that there was a substantial understatement, and
(3) Taking into account all the facts and circumstances, it is inequitable to hold the innocent spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement, then the innocent spouse shall be relieved of liability for tax(including interest, penalties, and other amounts) for the taxable year to the extent the liability is attributable to the substantial understatement.

(b) If the spouse's adjusted gross income for the preadjustment year is $20,000 or less, this section shall apply only if the liability described in subsection (a) is greater than ten per cent of the spouse's adjusted gross income. If the spouse's adjusted gross income for the preadjustment year is more than $20,000, this section shall apply only if the liability described in subsection (a) is greater than twenty-five per cent of the spouse's adjusted gross income. If the spouse is married to another spouse at the close of the preadjustment year, the spouse's adjusted gross income shall include the income of the new spouse (whether or not they file a joint return).

(c) For purposes of this section,

"Grossly erroneous items" mean, with respect to any spouse, any item of gross income attributable to the spouse which is omitted from gross income and any claim of a deduction, credit, or basis by the spouse in an amount for which there is no basis in fact or law.

"Preadjustment year" means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

"Substantial understatement" means any understatement which exceeds $500.

"Understatement" means the excess of:

(1) The amount of the tax required to be shown on the return for the taxable year, over

(2) The amount of the tax imposed which is shown on the return, reduced by any abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by this chapter was less than the excess of the amount which is the sum of:

(A) The amount shown as the tax on the taxpayer's return, if a return was made by the taxpayer and an amount was shown as tax by the taxpayer on the return, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over the abatements, credits, refunds, or other repayments previously made. [L 1994, c 13, §1]

Note

Applies to deficiency notices sent by the department of taxation to the taxpayers after December 31, 1990, for which relief of liability has been obtained pursuant to section 6013(e), of the Internal Revenue Code of 1986, as amended. L 1994, c 13, pt of §4.

§235-94 Returns by agent, guardian, etc.; liability of fiduciaries. (a) Returns of decedents. If an individual is deceased, the return of the individual required under section 235-92 shall be made by the individual's personal representative or other person charged with the care of property of the decedent.

(b) Persons under a disability. If an individual is unable to make a return required under section 235-92 or 235-97, the return of the individual shall be made by a duly authorized agent, the individual's committee, guardian, fiduciary, or other person charged with the care of the person or property of the individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(c) Receivers, trustees, and assignees for corporations. In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law, or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not the property or business is being operated, such receiver, trustee, or assignee shall make the return of income for the corporation in the same manner and form as corporations are required to make such returns.

(d) Returns of estates and trusts. Returns of an estate or a trust shall be made by the fiduciary thereof.

(e) Joint fiduciaries. Under such regulations as the department of taxation may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirement of this section. A return made pursuant to this subsection shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable the fiduciary to make the return, and the return is, to the best of the fiduciary's knowledge and belief, true and correct.

(f) Liability of fiduciaries. A tax imposed upon a fiduciary shall be a charge upon the property held by the fiduciary in that capacity. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-28; HRS §235-94; am L 1976, c 200, pt of §1; am imp L 1984, c 90, §1; gen ch 1985]

§235-94.5 REPEALED. L 1990, c 16, §4.

§235-95 Partnership returns. Every partnership shall make a return for each taxable year upon forms prescribed by the department of taxation, itemizing its gross income and allowable deductions and including the names and addresses of the persons who would be entitled to share in the income if distributed and the amount of each distributive share. The return shall be authenticated by the signature of any one of the partners, under the penalties provided by section 231-36, and the fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership. All provisions of this chapter relating to returns shall be applicable to partnership returns except as specifically otherwise stated in this section. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-29; HRS §235-95; am L 1995, c 92, §9]

§235-96 Returns by persons making payments. By duly promulgated regulations the department of taxation may require that any individual, partnership, corporation, joint stock company, association, insurance company, or other person, being a resident or having a place of business in this State, in whatever capacity acting, including lessees or mortgagors of real and personal property, fiduciaries, employers, and all officers and employees of the State or of any political subdivision thereof, having the control, receipt, custody, disposal, or payment of any annuity or interest on deposits or funds held in trust, including taxable income from endowment policies, other interest (except interest coupons payable to bearer), dividends, wages, rentals, royalties, premiums, or other emoluments, gains, profits, and income, paid or payable during any year to any person, shall, on such date or dates as the department shall from time to time designate, make a return to the department furnishing the information required by the regulations. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-30; HRS §235-96]

[§235-96.5] Returns relating to unemployment. (a) The state department of labor and industrial relations shall submit a return to the department of taxation according to the forms or rules prescribed by the director of taxation setting forth the aggregate amounts of payments of unemployment compensation and the name and address of the individual to whom paid under chapters 383 to 385.

(b) The department of labor and industrial relations shall furnish to each individual whose name is set forth in such return a written statement showing:

(1) The name and address of the department of labor and industrial relations; and

(2) The aggregate amount of payments to the individual as shown on such return. The written statement required by this subsection shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection(a) was made. No statement shall be required to be furnished to any individual under this subsection if the aggregate amount of payments to such individual shown on the return made under subsection (a) is less than $10. [L 1979, c 62, §2(4)]

§235-97 Estimates; tax payments; returns.

(a)(1) Individuals, corporations (including S corporations), estates, and trusts, shall annually furnish the department of taxation with a declaration of estimated tax for the current taxable year. Declarations of estimated tax, except as otherwise provided by rule, shall be governed by the provisions as to returns contained in sections 235-94, 235-98, 235-99, and 235-128. The declarations shall be made on estimated tax payment voucher forms. The payment voucher shall be filed, in the case of taxpayers on the calendar year basis, on or before April 20. In the case of a husband and wife who are entitled to submit a joint payment voucher for federal purposes, a single payment voucher may be submitted by them jointly, in which case the liability with respect to the estimated tax shall be joint and several; if a joint payment voucher is submitted but a joint income tax return is not made for the taxable year, the estimated tax for the year may be treated as the estimated tax of either the husband or the wife or may be divided between them.

(2) Each taxpayer shall transmit, with the payment voucher, payment of one-quarter of the estimated tax for the current taxable year. In determining this quarterly payment and all other installments, there first shall be deducted from the total estimated tax the amount of estimated tax withholding or collection at source for the taxable year. Thereafter, on the twentieth day of June and September, the taxpayer shall transmit with the payment voucher, payment of one-quarter of the estimated tax. The fourth quarter payment of the estimated tax shall be transmitted with the payment voucher by January 20 of the year following the taxable year for which the estimate was made.

(3) Taxpayers operating on a fiscal year basis shall make similar estimates and tax payments, on or before the twentieth day of the fourth month of the fiscal year and periodically thereafter so as to conform to the payments and returns required in the case of those on a calendar year basis.

(4) The department by rule may excuse individuals from filing an estimate in those cases where the gross income and exemptions are such that no tax is expected to accrue under this chapter, or are such that substantially all the tax will be collected through tax withholding or at the source.

(5) In the case of a foreign corporation, the department may excuse the filing of an estimate and the payment of estimated tax if it is satisfied that less than fifteen per cent of the corporation's business for the taxable year will be attributable to the State. For the purposes of this paragraph, fifteen per cent of a corporation's business shall be deemed attributable to the State if fifteen per cent or more of the entire gross income of the corporation (which for the purposes of this paragraph means gross income computed without regard to source in the State) is attributable to the State under sections 235-21 to 235-39 or other provisions of this chapter.

(6) In the case of a taxpayer whose tax liability is less than $500, the filing of an estimate and the payment of estimated tax shall not be required.

(b) Net income returns for the taxable year shall be filed with the department on or before the twentieth day of the fourth month following the close of the taxable year, and shall be accompanied by payment of the balance of the tax

for the taxable year, or the entire tax for the taxable year, as the case may be. These returns shall be filed both by persons required to make declarations of estimated tax pursuant to this section and by persons not required to make declarations of estimated tax.

(c) At the election of the taxpayer, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(d) A person who, under the regulations of the department adopted pursuant to subsection (a)(4), is relieved of filing an estimate, shall if the regulations cease to apply by reason of a change of circumstances during the taxable year, file the required estimate on the first quarterly payment date prescribed for payment of estimated taxes, following such change of circumstances, and pay the estimated tax in equal installments computed by allocating the entire amount shown by the estimate for the current taxable year to the remaining quarterly payment dates.

(e) An amendment of an estimate may be filed, under regulations prescribed by the department. If an amendment is filed, the remaining installments, if any, shall be ratably increased or decreased to reflect the increase or decrease in the estimate. The amended estimate may be accompanied by payment of the amount of underpayment, if any, and if so this shall be considered in determining the period of the underpayment as provided in subsection (g).

(f) In the case of any underpayment of estimated tax, except as provided by this subsection, there shall be added to the tax for the taxable year an amount determined at the rate of two-thirds of one per cent a month or fraction of a month upon the amount of the underpayment for the period of the underpayment.

(1) The amount of the underpayment shall be the excess of:
   (A) The required installment, over
   (B) The amount, if any, of the installment paid on or before the due date for the installment.
(2) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:
   (A) The twentieth day of the fourth month following the close of the taxable year, or
   (B) With respect to any portion of the underpayment, the date on which the portion is paid.

For purposes of this paragraph, a payment of estimated tax on any installment date shall be credited against unpaid required installments in the order in which the installments are required to be paid.

(3) For the purposes of this section, the term "tax" means the tax imposed under this chapter reduced by any credits available to the taxpayer other than the credit for amounts withheld from the taxpayer's wages or taxes withheld at the source, if any, for the taxable year.
(4) Sections 6654(d), (e)(2), (e)(3), (h), (i), (j), (k), and (l), (with respect to failure by an individual to pay estimated income tax), and 6655(d), (e), (g)(2), (g)(3), (g)(4), and (i) (with respect to failure by a corporation to pay estimated income tax) of the Internal Revenue Code, as of the date set forth in section 235-2.3(a), shall be operative for the purposes of this section; provided that the due dates contained in any of the preceding Internal Revenue Code sections shall be deemed to be the twentieth day of the applicable month.

(g) The amounts of taxes withheld from wages or collected at source shall be deemed payments of estimated tax, and an equal part of any such amount shall be deemed paid on each installment date for the taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld or collected, in which case the amounts so withheld or collected shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld or collected. [L Sp 1957, c 1, pt of §2; am L 1959, c 277, §12; am L Sp 1959 2d, c 1, §16; Supp, §121-31; am L 1967, c 134, §4; HRS §235-97; am L 1979, c 62, §2(12); am imp L 1984, c 90, §1; gen ch 1985; am L 1990, c 16, §3; am L 1991, c 20, §1; am L 1993, c 73, §§5, 6; am L 1995, c 67, §1]

Revision Note

In subsection (d), "(a)(4)" substituted for "(a)(5)".

Note

The 1995 amendment applies to taxable years beginning after December 31, 1994. L 1995, c 67, §3.

§235-98 Returns; form, verification and authentication, time of filing. Returns shall be in such form as the department of taxation may prescribe from time to time and shall be verified by written declarations that the statements therein made are subject to the penalties prescribed in section 231-36. Corporate returns shall be authenticated by the signature of the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act, under the penalties prescribed by section 231-36. The fact that an individual's name is signed on the corporation return shall be prima facie evidence that the individual is authorized to sign the return on behalf of the corporation.

The department may grant a reasonable extension of time for filing returns under such rules and regulations as it shall prescribe. Except in the case of persons who are outside the United States, no extension shall be for more than six months. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-32; HRS §235-98; am L 1995, c 92, §10]

§235-99 Same; place for filing. Returns shall be filed with the collector for the taxation district in which is located the legal residence or principal place of business of the person making the return, or, if such person has no legal

residence or principal place of business in the State, then with the collector at Honolulu. [L Sp 1957, c 1, pt of §2; Supp, §121-33; am L 1967, c 37, §1; HRS §235-99]

§235-100 Persons in military service. The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during the person's period of military service (which term, as used in this section, shall have the same meaning as in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended), shall be deferred for a period extending not more than six months after the termination of the person's period of military service if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the collection of such tax by distraint or otherwise shall be suspended for the period of military service of any individual the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the period of military service. [L Sp 1957, c 1, pt of §2; Supp, §121-34; HRS §235-100; am imp L 1984, c 90, §1; gen ch 1985]

[§235-100.5] Abatement of income taxes of members of armed forces on death. [Section retroactive to August 2, 1990.] Section 692 (with respect to income taxes of members of armed forces on death) of the Internal Revenue Code shall be operative for the purposes of this chapter and the department shall have the authority to abate income taxes as provided in section 692.

For the purposes of this section "member of the Armed Forces of the United States" shall have the same meaning as provided by section 7701(a)(15) of the Internal Revenue Code. [L 1991, c 208, §3]

§235-101 Federal returns and assessments, when copies are required. (a) In prescribing the form of return the department of taxation may require that a person who is required to file a federal income tax return include in the person's return a reconciliation of the return with the person's federal return, or that the person furnish with the return and as a part thereof a copy of the federal return.

(b) It shall be the duty of every person who is required by section 235-92 to make a return, to report to the department, as to any taxable year governed by this chapter, if (1) the amount of taxable income as returned to the United States is changed, corrected, or adjusted by an officer of the United States or other competent authority, or (2) a change in taxable income results from a renegotiation of a contract with the United States or a subcontract thereunder, or (3) a recomputation of the income tax imposed by the United States under the Internal Revenue Code results from any cause, or (4) an amended income tax return is made to the United States. The report shall be made within ninety days after the change, correction, adjustment, or recomputation is finally determined or the amended return is filed, as the case may be. The report required by this subsection shall be made in the form of an amendment of the person's return filed under this chapter. The amended return shall be accompanied by a copy of the document issued by the United States under (1) to (3). The statutory period for the assessment of any deficiency or the determination of any refund attributable to this report shall not expire before the expiration of one year from the date the department is notified by the taxpayer or the Internal Revenue Service, whichever is earlier, of such a report in writing. Before the expiration of this one-year period, the department and the taxpayer may agree in writing to the extension of this period. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Whenever, in the opinion of the department, it is necessary to examine any federal income tax return of any taxpayer or any determination, assessment, or report related thereto, the department may compel the taxpayer to produce for inspection a copy of any federal return, copies of all statements and schedules in support thereof, and copies of all determinations, assessments, and reports related thereto. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-35; HRS §235-101; am L 1978, c 173, §2(18); am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 18, §1; am L 1993, c 31, §1]

§235-102 Records and special returns. (a) Records. Every person liable to any tax imposed by this chapter or for the collection or deduction thereof at source, shall keep full, complete, regular, and accurate books of account in which all the person's transactions shall be entered in regular order; provided that the director of taxation may, by regulation, provide for the keeping of simpler accounts in cases where, by reason of the smallness of the income or otherwise, undue hardship or expense will be caused by the keeping of full books of account. All books of account required to be kept by this chapter shall be preserved for a period of three years, except that the director may, in writing, consent to their destruction within such period or may require that they be kept longer.

(b) Special returns and statements. Whenever it is necessary, in the judgment of the director, the director may require any taxpayer, or person liable for the collection or deduction of tax at source, by notice served upon the taxpayer or other person, to make such returns or render such signed statements as the director deems sufficient to show whether

or not the taxpayer or other person is liable under this chapter. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; am L 1963, c 45, §4(a); Supp, §121-36; HRS §235-102; am L 1969, c 274, §1; am imp L 1984, c 90, §1; gen ch 1985]

Case Notes

Cited: 33 H. 766.

§235-102.5 Income check-off authorized. Any individual whose state income tax liability for any taxable year is $2 or more may designate $2 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having a state income tax liability of $4 or more, each spouse may designate that $2 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked. [L 1979, c 224, §4; am L 1991, c 112, §1]

§235-103 Distortion of income. When a taxpayer so conducts business as either directly or indirectly to benefit stockholders thereof, or any other person interested therein, by selling products or the goods or commodities in which the taxpayer deals at less than the fair price that could be obtained for them, or where a corporation, a substantial portion of the capital stock of which is owned either directly or indirectly by another corporation, acquires or disposes of the products of the corporation so owning a substantial portion of its stock in such manner as to create a loss or improper income to either of the corporations, or where a partnership or individual owns an interest in another corporation or business either directly or indirectly and acquires and disposes of the products of such other business in such manner as to create a loss or improper income to either of the businesses, and generally in all cases where different forms of business enterprise are used in conjunction with one another for the purpose, among others, of diverting profits reasonably and properly made by one factor agency or segment of the business to another, the director of taxation may determine the amount of tax upon either or both of the enterprises for the taxable year, having due regard to the reasonable profits which but for such arrangement, understanding, business device, or organization might or could have accrued to either or both of the enterprises. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-37; HRS §235-103; am imp L 1984, c 90, §1; gen ch 1985]

§235-104 Penalties. Penalties and interest shall be added to and become part of the tax, when and as provided by sections 231-39 and 235-97. The penalties and interest provided by section 231-39 shall apply to employers as well as taxpayers. [L Sp 1957, c 1, pt of §2; Supp, §121-38; HRS §235-104]

Case Notes

When penalty applied. 33 H. 766.

§235-105 Failure to keep records, render returns, or make reports by responsible persons. The penalties provided by sections 231-34, 231-35, and 231-36 shall apply to any person, whether acting as principal, agent, officer, or director for oneself, itself, or another person and shall apply to each single violation. These penalties shall be in addition to other penalties provided by law. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-39; HRS §235-105; am imp L 1984, c 90, §1; gen ch 1985; am L 1995, c 92, §11]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

§235-106 REPEALED. L 1995, c 92, §23.

§235-107 Procedure upon failure to file return. If any taxpayer or employer liable to make and file a return under this chapter fails, neglects, or refuses to make and file a return as required within the time prescribed, or declines to authenticate a return if made, the department of taxation shall make a return for the taxpayer or employer from the best information obtainable and shall levy and assess against the taxpayer or employer the tax upon the amount of taxable income, or the tax required to be withheld from wages and paid over, as shown by such return, to which shall be added the penalties and interest provided by section 231-39. The assessment shall be presumed to be correct until and unless, upon an appeal duly taken as provided in this chapter, the contrary shall be clearly proved by the taxpayer or employer and the burden of proof upon appeal shall be upon the taxpayer or employer to disprove the correctness of the assessment. Notice of the assessment shall be given, and an appeal therefrom may be taken, in the manner and within the time provided in section 235-108(b) and section 235-114. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-41; HRS §235-107]

§235-108 Audit of return; procedure; additional taxes. (a) Audit. The director of taxation or a responsible person designated by the director to act in the premises for the purpose of verification or audit of a return made by the taxpayer or employer, or for the purpose of making a return where none has been made, is authorized and empowered to examine all account books, bank books, bank statements, records, vouchers, copies of federal tax returns, and any and all other documents and evidences having any relevancy to the determination of the income or wages as required to be returned under this chapter, and the director may employ the director's powers under section 231-7 for such purposes.

(b) Additional taxes. If the department of taxation discovers from the examination of the return or otherwise that income, or the liability of an employer in respect of wages, or any portion thereof, has not been assessed, it may assess the same and give notice to the taxpayer or employer of the assessment, and the taxpayer or employer shall thereupon have an opportunity within thirty days to confer with the department as to the proposed assessment. After the expiration of thirty days from such notification the department shall assess the income of the taxpayer, or the liability of the employer in respect of wages, or any portion thereof which it believes has not heretofore been assessed, and shall give notice to the taxpayer or employer of the amount of the tax and interest and penalties if any, and the amount thereof shall be paid within twenty days after the date the notice was mailed, properly addressed to the taxpayer or employer at the taxpayer's or employer's last known address or place of business. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-42; HRS §235-108; am imp L 1984, c 90, §1; gen ch 1985]

Case Notes

Assessor not bound to take return as true. 16 H. 796.
Method of computing deprecation not reflective of income. 18 H. 530.
Reassessment proper when income in previous year unreported. 28 H. 261.

§235-109 Jeopardy assessments, security for payment, etc. Section 231-24 shall apply to the taxes imposed by this chapter, both in respect of taxpayers and employers. [L Sp 1957, c 1, pt of §2; Supp, §121-43; HRS §235-109]

§235-110 Credits and refunds. (a) If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the amount of the credit shall be refunded in the manner provided in section 231-23(c). Within the meaning of this subsection, each amount of tax deducted and withheld from a taxpayer's wages is an installment of taxes paid by the taxpayer. A refund or credit shall be made to an employer only to the extent that the amount of overpayment claimed by the employer as a credit or refund was not deducted and withheld by the employer.

(b) This section does not apply in the case of a payment made pursuant to an assessment by the department of taxation under section 235-107 or 235-108(b). No refund or overpayment credit may be had under this section in any event unless the original payment of the tax was due to the law having been interpreted or applied in respect of the taxpayer concerned differently than in respect of the taxpayers generally. As to all tax payments for which a refund or credit is not authorized by this section (including without prejudice to the generality of the foregoing cases of unconstitutionality) the remedies provided by appeal or under section 40-35 are exclusive. However, nothing in this subsection shall be deemed applicable to a credit or refund authorized by sections 235-55, 235-66, or 235-71, or resulting from the tax as returned being less than the tax as estimated; in any of these cases a credit or refund is authorized even though the tax for the taxable year remains subject to determination by the department and assessment as provided bylaw.

(c) Any refund earned under this section shall be made in the manner provided in section 231-23(c). [L Sp 1957, c 1, pt of §2; am L 1959, c 277, §13; am L Sp 1959 2d, c 1, §16; am L 1963, c 45, §§4(b), (c), (d); Supp, §121-44; HRS §235-110]

Revision Note

In subsections (a) and (c), "231-23(c)" substituted for "231-23(d)".

Attorney General Opinions

Levy on unclaimed warrants by Internal Revenue Service for delinquent federal taxes should be honored. Att. Gen. Op. 62-4.

§235-110.5 REPEALED. L 1987, c 40, §2.

[§235-110.6] Fuel tax credit for commercial fishers. (a) Each principal operator of a commercial fishing vessel who files an individual or corporate net income tax return for a taxable year may claim an income tax credit under this section against the Hawaii state individual or corporate net income tax.

(b) The tax credit shall be an amount equal to the fuel taxes imposed under section 243-4(a) and paid by the principal operator during the taxable year.

(c) The tax credit claimed under this section by the principal operator shall be deductible from the principal operator's individual or corporate income tax liability, if any, for the tax year in which the credit is properly claimed; provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been made by them shall claim only the tax credit to which they would have been entitled had a joint return been filed. If the tax credit claimed by the principal operator under this section exceeds the amount of the income tax payments due from the principal operator, the excess of credit over payments due shall be refunded to the principal operator; provided that the tax credit properly claimed by a principal operator who has no income tax liability shall be paid to the principal operator; and provided further no refunds or payments on account of the tax credit allowed by this section shall be made for amounts less than $1.

(d) The director of taxation shall prepare such forms as may be necessary to claim a credit under this section, may require proof of the claim for the tax credit, and may adopt rules pursuant to chapter 91.

(e) All of the provisions relating to assessments and refunds under this chapter and under section 231-23(c)(1) shall apply to the tax credit under this section.

(f) Claims for the tax credit under this section, including any amended claims thereof, shall be filed on or before the end of the twelfth month following the taxable year for which the credit may be claimed.

(g) As used in this section:

(1) "Commercial fishing vessel" means any water vessel which is used to catch or process fish or transport fish loaded on the high seas.

(2) "Principal operator" means any individual or corporate resident taxpayer who derives at least fifty-one per cent of the taxpayer's gross annual income from commercial fishing operations. [L 1981, c 210, §1]

Revision Note

In subsection (e), "231-23(c)(1)" substituted for "231-23(d)(1)".

§235-110.7 Capital goods excise tax credit. (a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the tax credit shall be determined by the application of the following rates against the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and placed in service within Hawaii after December 31, 1987. For calendar years beginning after: December 31, 1987, the applicable rate shall be three percent; December 31, 1988, and thereafter, the applicable rate shall be four per cent, except that for the period January 1, 1993, through December 31, 2002, and for eligible depreciable tangible personal property used in a trade or business that is purchased in a county in which the county general excise and use tax surcharge is in effect and placed in service in any county the applicable rate shall be four and one-half per cent. For taxpayers with fiscal taxable years, the applicable rate shall be the rate for the calendar year in which the eligible depreciable tangible personal property used in the trade or business is placed in service within Hawaii.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for eligible depreciable tangible personal property which is placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rules.

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the tax credit allowed under this section shall not exceed the amount of use tax, and for the period January 1, 1993, through December 31, 2002, the amount of the county general excise and use tax surcharge, actually paid under chapter 238 relating to such tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of 1954, as amended, no tax credit shall be allowed for that portion of the cost of property for which the deduction was taken.

(b) If the tax credit is claimed by a taxpayer at the rate of four and one-half per cent, and the tangible personal property is purchased in a county in which the county general excise and use tax surcharge is not in effect, there shall be added to and become part of the tax liability of the taxpayer:

(1) The amount of the tax credit claimed under this section multiplied by three; or

(2) Ten per cent of the income tax liability for the taxable year for which the income tax return is being filed, whichever is greater.

If the capital goods excise tax credit allowed under subsection (a) exceeds the taxpayer's net income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than $1.

All claims for tax credits under this section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(c) Application for the capital goods excise tax credit shall be upon forms provided by the department of taxation.

(d) Sections 47 (with respect to dispositions of section 38 property and the recapture percentages) of the Internal Revenue Code of 1954, as amended, as of December 31, 1984, and 280F as operative for this chapter (with respect to limitation on investment tax credit and depreciation for luxury automobiles; limitation where certain property used for personal purposes) of the Internal Revenue Code of 1954, as amended, shall be operative for purposes of this section.

(e) As used in this section, the definition of section 38 property (with respect to investment in depreciable tangible personal property) as defined by section 48(a)(1)(A), (a)(1)(B), (a)(3), (a)(4), (a)(7), (a)(8), (a)(10)(A), (b), (c), (f), (l), (m), and (s) of the Internal Revenue Code of 1954, as amended as of December 31, 1984, is operative for the purposes of this section only.

As used in this section:

"Cost" means (1) the actual invoice price of the tangible personal property, or (2) the basis from which depreciation is taken under section 167 (with respect to depreciation) or from which a deduction may be taken under section 168 (with respect to accelerated cost recovery system) of the Internal Revenue Code of 1954, as amended, whichever is less.

"Eligible depreciable tangible personal property" is section 38 property as defined by the operative provisions of section 48 and having a depreciable life under section 167 or for which a deduction may be taken under section 168 of the federal Internal Revenue Code of 1954, as amended.

"Placed in service" means the earliest of the following taxable years:

(1) The taxable year in which, under the:
   (A) Taxpayer's depreciation practice, the period for depreciation; or
   (B) Accelerated cost recovery system, a claim for recovery allowances; with respect to such property begins; or
(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Purchase" means an acquisition of property.

"Tangible personal property" means tangible personal property which is placed in service within Hawaii after December 31, 1987, and the purchase or importation of which resulted in a transaction which was subject to the imposition and payment of tax at the rate of four per cent, except that for the period January 1, 1993, through December 31, 2002, and if the county general excise and use tax surcharge is in effect the tax rate shall be four and one-half per cent, under chapter 237 or 238. "Tangible personal property" does not include tangible personal property which is an integral part of a building or structure or tangible personal property used in a foreign trade zone, as defined under chapter 212. [L 1987, c 239, §1(2); am L 1988, c 141, §21; am L 1989, c 7, §1; am L 1990, c 184, §§7, 8; am L 1992, c 235, §6]

Note

Development agreement requirements and effect of 1990 amendment until 31, 2002. L 1990, c 184, §§11, 13.

Cross References

Transit capital development fund, see chapter 51D.

§235-110.8 Low-income housing tax credit. (a) Section 42 (with respect to low-income housing credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section.

(b) There shall be allowed to each resident taxpayer subject to the tax imposed by this chapter, a low-income housing tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(c) The low-income housing tax credit shall be thirty percent of the applicable percentage of the qualified basis of each building located in Hawaii. Applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.

(d) For the purposes of this section, the determination of:
   (1) Qualified basis and qualified low-income building shall be made under section 42(c);
   (2) Eligible basis shall be made under section 42(d);
   (3) Qualified low-income housing project shall be made under section 42(g);
   (4) Recapture of credit shall be made under section 42(j), except that the tax for the taxable year shall be increased under section 42(j)(1) only with respect to credits that were used to reduce state income taxes;
   (5) Application of at-risk rules shall be made under section 42(k); of the Internal Revenue Code.

(e) As provided in section 42(e), rehabilitation expenditures shall be treated as separate new building and their treatment under this section shall be the same as in section 42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special rules in section 42(i) shall be operative for the purposes of this section.

(f) The state housing credit ceiling under section 42(h) shall be zero for the calendar year immediately following the expiration of the federal low-income housing tax credit program and for any calendar year thereafter, except for the

carryover of any credit ceiling amount for certain projects in progress which, at the time of the federal expiration, meet the requirements of section 42.

(g) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of deducting this tax credit, net income tax liability means net income tax liability reduced by all other credits allowed the taxpayer under this chapter.

A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to properly claim the credit shall constitute a waiver of the right to claim the credit. In order to claim a credit under this section, a taxpayer must claim a credit under section 42 of the Internal Revenue Code.

Section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section.

(h) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section. [L 1988, c 216, §1; am L 1989, c 13, §6]

§235-111 Limitation period for assessment, levy, collection, or credit; net operating loss carrybacks. (a) General rule. The amount of income taxes imposed by this chapter (also the amount of income taxes imposed by any preceding law of the State) and the liability of any employer in respect of wages, shall be assessed or levied and the overpayment, if any, shall be credited within three years after filing of the return for the taxable year, or within three years of the due date prescribed for the filing of the return, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall be begun after the expiration of the period.

(b) Limitations on credit or refund. Claim for credit or refund of an overpayment of any tax imposed by this chapter shall be filed by the taxpayer or employer within three years from the time the return was filed or from the due date prescribed for the filing of the return, or within two years from the time the tax was paid, whichever is later. For the purposes of this section, taxes paid before the due date of the return shall be deemed to have been paid on the due date of the return determined without regard to any extensions.

(1) If the claim was filed by the taxpayer during the three-year period prescribed in this subsection, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return.

(2) If the claim was not filed within the three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim.

(3) If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under paragraph (1) or (2), as the case may be, if the claim was filed on the date the credit or refund is allowed.

(c) Exceptions; fraudulent return or no return. In the case of a false or fraudulent return with intent to evade tax or liability, or of a failure to file return, the tax or liability may be assessed or levied at any time; provided that in the case of a return claimed to be false or fraudulent with intent to evade tax or liability, the determination as to the claim shall first be made by a judge of the circuit court for or in the circuit within which the taxpayer or employer has the taxpayer's or employer's residence or principal place of business, or if none in the State then in the first circuit, upon petition filed by the department of taxation. The petition and other pleadings and proceedings in the matter shall be governed and conducted in accordance with statutory and other requirements relating to proceedings in equity, including all rights to appeal allowed in the proceedings. No assessment or levy of the tax or liability after the expiration of the three-year period shall be made unless so provided in the final decree entered in the proceedings.

(d) Extension by agreement. Where, before the expiration of the time prescribed in subsection (a) for the assessment, levy, and collection of the tax or liability, or in subsection (b) for the credit or refund of an overpayment, both the department and the taxpayer or employer have consented in writing to its assessment or levy after that date, the tax or liability may be assessed or levied or the overpayment, if any, may be credited at any time prior to the expiration of the period previously agreed upon. The period so agreed upon may be extended by the subsequent agreements in writing made before the expiration of the period previously agreed upon.

(e) Overpayment of carrybacks. If an overpayment results from a net operating loss carryback, the statute of limitations in subsections (a) and (b) shall not apply. The overpayment shall be credited within three years of the due date prescribed for filing the return (including extensions thereof) for the taxable year of the net operating loss, or the period agreed to under subsection (d) with respect to the taxable year, whichever expires later. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-45; HRS §235-111; am L 1969, c 274, §2; am L 1971, c 9, §1; gen ch 1985; am L 1991, c 22, §1; am L 1993, c 257, §1; am L 1994, c 18, §1]

Note

The 1994 amendment applies to credits or refunds claimed or made after December 31, 1993. L 1994, c 18, §3.

Cross References

Suspension of limitation period during bankruptcy proceedings, see §231-3.5.

Case Notes

Applicable limitations period for refund claim for public service company taxes; when period starts to run. 68 H. 391, 716 P.2d 1128.

§235-112 Time for assessment of deficiency attributable to gain upon conversion. (a) If a taxpayer has made the election provided in section 1033(a)(2)(A) of the Internal Revenue Code, the rules stated in this section apply.

(b) The statutory period for the assessment of any deficiency, for any taxable year in which is realized any part of the gain on the conversion which is the subject of the election referred to in subsection (a) of this section, attributable to such gain, shall not expire prior to the expiration of three years from the date the department of taxation is notified by the taxpayer (in such manner as the department has prescribed or may prescribe) of the replacement of the converted property or of an intention not to replace, and such deficiency may be assessed at any time before the expiration of this three-year period notwithstanding any other provision which would otherwise prevent such assessment.

(c) If the property or stock purchased as a replacement for converted property was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from the election referred to in subsection (a) of this section, for any taxable year ending before such last taxable year may be assessed, notwithstanding any other provision which would otherwise prevent such assessment, at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed. [L 1959, c 277, pt of §14; am L Sp 1959 2d, c 1, §16; Supp, §121-45.1; HRS §235-112; am L 1979, c 62, §2(13)]

§235-113 Time for assessment of deficiency attributable to gain upon sale of a residence. (a) If after December 31, 1957, a taxpayer during a taxable year sells at a gain property used by the taxpayer as the taxpayer's principal residence, the rules stated in this section apply.

(b) The statutory period for the assessment of any deficiency attributable to any part of the gain referred to in subsection (a) of this section shall not expire before the expiration of three years from the date the department of taxation is notified by the taxpayer (in such manner as the department has prescribed or may prescribe) of the matters set out in subsection (c) of this section, and such deficiency may be assessed at any time before the expiration of the three-year period notwithstanding any other provision which would otherwise prevent such assessment.

(c) The notice referred to in subsection (b) of this section shall inform the department of:

(1) The taxpayer's cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of the gain referred to in subsection (a) of this section, or

(2) The taxpayer's intention not to purchase a new residence within the period specified in section 1034(a) of the Internal Revenue Code, or

(3) A failure to make such purchase within such period. [L 1959, c 277, pt of §14; am L Sp 1959 2d, c 1, §16; Supp, §121-45.2; HRS §235-113; am imp L 1984, c 90, §1; gen ch 1985]

APPEAL

§235-114 Appeals. Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth; provided the tax so assessed shall have been paid. Appeal may be made either to the district board of review or to the tax appeal court.

If the appeal is first made to the board, the appeal shall either be heard by the board or be transferred to the tax appeal court for hearing at the election of the taxpayer or employer. If heard by the board, an appeal shall lie from the decision thereof to the tax appeal court and to the supreme court in the manner and with the costs provided by chapter 232. The supreme court shall prescribe forms to be used in the appeals. The forms shall show the amount of taxes or liability upon the basis of the taxpayer's computation of the taxpayer's taxable income or the employer's computation of the employer's liability, the amount upon the basis of the assessor's computation, the amount upon the basis of the decisions of the board of review and tax appeal court, if any, and the amount in dispute. If or when the appeal is filed with or transferred to the tax appeal court, the court shall proceed to hear and determine the appeal, subject to appeal to the supreme court as is provided in chapter 232.

Any taxpayer or employer appealing from any assessment of income taxes or liability shall lodge with the assessor or assistant assessor a notice of the appeal in writing, stating the ground of the taxpayer's or employer's objection to the additional assessment or any part thereof. The taxpayer or employer shall also file the notice of appeal with the board or the tax appeal court at any time within thirty days subsequent to the date when the notice of assessment was mailed properly addressed to the taxpayer or employer at the taxpayer's or employer's last known residence or place of business. Except as otherwise provided, the manner of taking the appeal, the costs applicable thereto, and the hearing and disposition thereof, including the distribution of costs and of taxes paid by the taxpayer pending the appeal, shall be as provided in chapter 232.

The board or the tax appeal court may allow an individual taxpayer to file an appeal without payment of the net income tax in cases where the total tax liability does not exceed $50,000 in the aggregate for all tax years, upon proof that the taxpayer would be irreparably injured by payment of the tax. [L Sp 1957, c 1, pt of §2; Supp, §121-46; am L 1967, c 37, §1; HRS §235-114; am L 1973, c 51, §3; am imp L 1984, c 90, §1; gen ch 1985; am L 1992, c 147, §3]

Rules of Court

See Tax Appeal Court Rules.

Case Notes

Provides avenue for a full and fair consideration of taxpayer's challenge to gross receipts tax. 742 F.2d 546.
Mandamus to compel issuance of certificate of appeal. 18 H. 362.

§235-115 Assessments, etc., prima facie proof. The effect of the notices of assessments and records prepared by or under the authority of the department of taxation shall be as set forth in sections 231-20 and 235-107. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-47; HRS §235-115]

§235-116 Disclosure of returns unlawful; penalty. All tax returns and return information required to be filed under this chapter shall be confidential, including any copy of any portion of a federal return which may be attached to a state tax return, or any information reflected in the copy of such federal return.It shall be unlawful for any person, or any officer or employee of the State to make known intentionally information imparted by any income tax return or estimate made under sections 235-92, 235-94, 235-95, and 235-97 or wilfully to permit any income tax return or estimate so made or copy thereof to be seen or examined by any person other than the taxpayer or the taxpayer's authorized agent, persons duly authorized by the State in connection with their official duties, the Multistate Tax Commission or the authorized representative thereof, except as provided by law, and any offense against the foregoing provisions shall be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both. [L Sp 1957, c 1, pt of §2; Supp, §121-48; HRS §235-116; am L 1974, c 139, §3; am L 1978, c 172, §1; am imp L 1984, c 90, §1; gen ch 1985]

§235-117 Reciprocal supplying of tax information. Notwithstanding section 235-116, the department of taxation may permit the Secretary of the Treasury of the United States, the Commissioner of Internal Revenue, the Multistate Tax Commission, or the proper officer of any state or territory imposing an income tax upon incomes of persons taxable under this chapter, or the authorized representatives thereof to inspect the income tax returns and estimates of any such person for tax purposes only. The department may also furnish to such authorized persons an abstract of an income tax return or estimate or supply such persons with information concerning any item of income contained in a return or disclosed by the report of an investigation of the income or return of a taxpayer. The Multistate Tax Commission may make such information available to a duly accredited tax official of the United States or to a duly accredited tax official of any state or territory, or the authorized representative thereof, for tax purposes only. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-49; HRS §235-117; am L 1974, c 139, §4]

§235-118 Rules and regulations. Except as otherwise provided in this chapter, the department of taxation shall prescribe and have printed all needful rules and regulations for the enforcement of this chapter and such rules and regulations so made shall have the force and effect of law if they be not in conflict with the express statutory provisions to which the same are applicable. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §16; Supp, §121-50; HRS §235-118]

Cross References

Rulemaking procedure, see chapter 91.

§235-119 Taxes, state realizations. All income taxes shall be for the use of the State and shall be paid into the state treasury at such times as the director of finance shall direct. [L Sp 1957, c 1, pt of §2; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; Supp, §121-52; HRS §235-119]

PART VII. HAWAII S CORPORATION INCOME TAX ACT

[§235-121] Title; definitions; federal conformity; construction. (a) The title of this part shall be the Hawaii S corporation income tax act.

(b) For purposes of this part, the following terms shall have the following meanings:

"C corporation" means a corporation which is not an S corporation.

"Income attributable to the State" means items of income, loss, deduction, or credit of the S corporation apportioned to this State pursuant to part II of this chapter or allocated to this State pursuant to section 235-5.

"Income not attributable to the State" means all items of income, loss, deduction, or credit of the S corporation other than income attributable to the State.

"Internal Revenue Code" has the meaning set forth in section 235-2.3 and as it applies to the taxable period; section references of the Internal Revenue Code shall be deemed to refer to corresponding provisions of prior and subsequent federal tax laws.

"Post-termination transition period" means that period defined in section 1377(b)(1) of the Internal Revenue Code.

"Pro rata share" means the share determined with respect to an S corporation shareholder for a taxable period in the manner provided in section 1377(a)(1) or (2) or 1362(e)(2) or (3) or (6)(D), as the case may be, of the Internal Revenue Code.

"S corporation" means a corporation for which a valid election under section 1362(a) of the Internal Revenue Code is in effect.

"Taxable period" means any taxable year or portion of a taxable year during which a corporation is an S corporation.

(c) Except as otherwise expressly provided or clearly appearing from the context, any term used in this part shall have the same meaning as when used in a comparable context in the Internal Revenue Code, or in any statute relating to federal income taxes, in effect for the taxable period. Due consideration shall be given in the interpretation of this part to applicable sections of the Internal Revenue Code in effect from time to time and to federal rulings and regulations interpreting those sections, provided the Internal Revenue Code rulings and regulations do not conflict with this part or other provisions of this chapter.

(d) This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this part among states enacting it. [L 1990, c 16, pt of §1]

[§235-122] Taxation of an S corporation and its shareholders. (a) An election under section 1362(a) of the Internal Revenue Code shall be effective for the purposes of this chapter. Evidence of a valid election for federal purposes shall be submitted to the department in such form and at such time the department may prescribe.

(b) Except as provided in the following sentence, an S corporation shall not be subject to the tax imposed by section 235-71. If income of an S corporation is subject to federal income tax, then such income as modified by section 235-123, to the extent it constitutes income attributable to the State, shall be taxed at the highest marginal rate of tax imposed on the net income of corporations. If an S corporation is required to pay a tax to this State by reason of the preceding sentence, then the income attributable to the State of the S corporation shall be reduced by the amount of the tax.

(c) Each shareholder's pro rata share of income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, to the extent modified pursuant to section 235-123, shall be taken into account by the shareholder in the manner provided in section 1366 of the Internal Revenue Code for the purposes of section 235-4 and shall be taxable under section 235-51. [L 1990, c 16, pt of §1]

[§235-123] Modification and characterization of income. (a) The pro rata share of each resident and nonresident shareholder in the income attributable to the State of an S corporation, for the purposes of section 235-122(c), shall be subject to the modifications to corporate income provided by this chapter.

(b) The pro rata share of each resident shareholder in the income not attributable to the State of an S corporation, for the purposes of section 235-122(c), shall be subject to the modifications to individual income provided by this chapter.

(c) S corporation items taken into account by a shareholder pursuant to section 235-122(c) shall be characterized as though received or incurred by the corporation and not its shareholder. [L 1990, c 16, pt of §1]

[§235-124] Basis and adjustments. (a) The initial basis of a resident shareholder in the stock of an S corporation and in any indebtedness of the corporation owed to the shareholder shall be determined in the manner provided under the Internal Revenue Code. The initial basis shall be determined as of the last to occur of the date (which may be before taxable years beginning after December 31, 1989) on which:

(1) The shareholder last became a resident of this State;
(2) The shareholder acquired the stock or the indebtedness of the corporation; or
(3) The corporation became an S corporation.

(b) The initial basis of a resident shareholder in the stock and indebtedness of an S corporation shall be adjusted after the date specified in subsection (a) in the manner and to the extent required by section 1011 of the Internal Revenue Code except that, with respect to any taxable period during which the shareholder was a resident of this State:

(1) Any modification made (other than for income exempt from federal or this State's taxation) pursuant to section 235-123 shall be taken into account; and
(2) Any adjustments made pursuant to section 1367 of the Internal Revenue Code for a taxable period during which this State did not measure S corporation shareholder income by reference to the corporation's income shall not be taken into account.

(c) The initial basis of a nonresident shareholder in the stock of an S corporation and in any indebtedness of the corporation to the shareholder shall be zero. The initial basis shall be determined as of the last to occur of the date (which may be before taxable years beginning after December 31, 1989) on which:

(1) The shareholder acquired the stock or the indebtedness of the corporation;
(2) The corporation became an S corporation; or
(3) The shareholder last became a nonresident of this State.

(d) The initial basis of a nonresident shareholder in the stock and indebtedness of an S corporation shall be adjusted after the date specified in subsection (c) in the manner provided in section 1367 of the Internal Revenue Code, except that adjustments to basis shall be limited to the income attributable to the State taken into account by the shareholder pursuant to section 235-122(c). In computing income attributable to the State for purposes of the preceding sentence, any modification made for income exempt from federal or this State's taxation shall not be taken into account.

(e) The basis of a resident shareholder in the stock of a corporation shall be reduced by the amount allowed as a loss or deduction pursuant to section 235-125(d).

(f) The basis of a resident shareholder in the stock of a corporation shall be reduced by the amount of any cash distribution which is not taxable to the shareholder as a result of the application of section 235-127(b).

(g) For purposes of this section, a shareholder shall be considered to have acquired stock or indebtedness received by gift at the time the donor acquired the stock or indebtedness, if the donor was a resident of this State at the time of the gift. [L 1990, c 16, pt of §1]

Revision Note

"Taxable years beginning after December 31, 1989" substituted for other original language.

[§235-125] Carryforwards and carrybacks; loss limitation. (a) Carryforwards and carrybacks to and from taxable periods of an S corporation shall be restricted in the manner provided in section 1371(b) of the Internal Revenue Code.

(b) The aggregate amount of losses or deductions of an S corporation taken into account by a shareholder pursuant to section 235-122(c) shall not exceed the combined adjusted bases, determined in accordance with section 235-124, of the shareholder in the stock and indebtedness of the S corporation.

(c) Any loss or deduction which is disallowed for a taxable period pursuant to subsection (b) shall be treated as incurred by the corporation in the succeeding taxable period with respect to the shareholder.

(d)(1) Any loss or deduction which is disallowed pursuant to subsection (b) for the corporation's last taxable period as an S corporation shall be treated as incurred by a shareholder on the last day of any post-termination transition period.

(2) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to paragraph (1) shall not exceed the adjusted basis of the shareholder in the stock of the corporation (determined in accordance with section 235-124 at the close of the last day of any post-termination transition period and without regard to this subsection). [L 1990, c 16, pt of §1]

[§235-125.5] Transition rule. (a) A corporation for which an S election was in effect for federal purposes but not for Hawaii purposes for the taxable period immediately preceding the taxable period beginning after December 31, 1989, may elect before December 31, 1992, not to have section 235-125(a) apply to carryforwards from taxable periods preceding the taxable period beginning after December 31, 1989, for which a Hawaii S election was not in effect. An election pursuant to this section shall be applicable to all such carryforward items.

(b) A net operating loss carryforward subject to an election under this section shall be allowed as a deduction in computing S corporation taxable income after all other items of income and deductions have been taken into account in accordance with this part and shall not reduce S corporation taxable income below zero.

(c) A carryforward, other than a net operating loss carryforward, subject to an election under this section shall be taken into account by the corporation in computing taxable income as though an S election were not in effect for the year. In computing taxable income under this subsection, the allowance of a deduction for a net operating loss carryforward shall be determined in accordance with subsection (b).

(d) No carryforwards subject to the election under this section may be carried forward to a C corporation year within the meaning of Internal Revenue Code section 1371(b).

(e) An election pursuant to this section shall be made on a timely filed (including extension) S corporation income tax return for the first taxable period beginning after December 31, 1989, or an amended return filed before December 31, 1992. A copy of the election shall be attached to the S corporation tax return for each year to which the carryforward is carried. [L 1991, c 24, §1]

[§235-126] Part-year residence. For purposes of this part if a shareholder of an S corporation is both a resident and nonresident of this State during any taxable period, the shareholder's pro rata share of the S corporation's income attributable to the State and income not attributable to the State for the taxable period shall be further prorated between the shareholder's periods of residence and nonresidence, in accordance with the number of days in each period. [L 1990, c 16, pt of §1]

[§235-127] Distributions. (a) Subject to subsection (c), a distribution made by an S corporation with respect to its stock to a resident shareholder shall be taken into account by the shareholder for purposes of section 235-4 and shall

be taxable under section 235-51 to the extent that the distribution is treated as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Internal Revenue Code.

(b) Subject to subsection (c), a distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period shall not be taken into account by the shareholder for purposes of section 235-4 to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Internal Revenue Code.

(c) In applying sections 1368 and 1371(e) of the Internal Revenue Code to any distribution referred to in subsection (a) or (b):

(1) The term "adjusted basis of the stock" means the adjusted basis of the shareholder's stock as determined under section 235-124; and

(2) The accumulated adjustments account for this State shall be equal to, and shall be adjusted in the same manner as, the S corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Internal Revenue Code, except that the account shall also be adjusted by any modifications required to be made pursuant to section 235-123(a). [L 1990, c 16, pt of §1]

[§235-128] Returns; shareholder agreements; mandatory payments. (a) An S corporation which engages in activities in this State which would subject a C corporation to the requirement to file a return under section 235-92 shall file with the department an annual return, in the form prescribed by the department, on or before the due date prescribed for the filing of C corporation returns by section 235-97.

Every S corporation shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by this chapter, the name, address, and social security or federal identification number of each person owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the income attributable to the State and income not attributable to the State with respect to each shareholder as determined under this part, the modifications required by section 235-123, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each such distribution, and such other information as the department may by form or rule prescribe.

The S corporation, on or before the day on which such return is filed, shall furnish to each person who was a shareholder during the year a copy of the information shown on the return as the department may by form or rule prescribe. Any return filed pursuant to this section, for purposes of sections 235-111 and 235-112, shall be treated as a return filed by the corporation under section 235-92. The S corporation shall also maintain the accumulated adjustments account described in section 235-127(c)(2).

(b) The department shall permit S corporations to file composite returns and to make composite payments of tax on behalf of some or all of its nonresident shareholders. The department may permit composite returns and payments to be made on behalf of resident shareholders.

(c) An S corporation shall file with the department, in the form prescribed by the department, the agreement of each nonresident shareholder of the corporation:

(1) To file a return and make timely payment of all taxes imposed by this State on the shareholder with respect to the income of the S corporation; and

(2) To be subject to personal jurisdiction in this State for purposes of the collection of unpaid income tax, together with related interest and penalties.

If the corporation fails to timely file the agreements required by paragraphs (1) and (2) on behalf of each of its nonresident shareholders, then the corporation, at the times set forth in subsection (d), shall pay to this State on behalf of each nonresident shareholder in respect of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under section 235-51 multiplied by the amount of the shareholder's pro rata share of the income attributable to the State reflected on the corporation's return for the taxable period. An S corporation shall be entitled to recover a payment made pursuant to the preceding sentence from the shareholder on whose behalf the payment was made.

(d) The agreements required to be filed pursuant to subsection (c) shall be filed at the following times:

(1) At the time the annual return is required to be filed for the first taxable period for which the S corporation became subject to this part, and

(2) At the time the annual return is required to be filed for any taxable period in which the corporation had a nonresident shareholder on whose behalf such an agreement has not been previously filed.

(e) Any amount paid by the corporation to this State pursuant to subsection (b) or (c) shall be considered to be a payment by the shareholder on account of the income tax imposed on the shareholder for the taxable period.

(f) Any officer of any S corporation who wilfully fails to provide any information, file any return or agreement, make any payment, or maintain any account as required by this section or by section 231-15.6 shall be guilty of a misdemeanor. [L 1990, c 16, pt of §1]

§235-129 Tax credits. (a) For purposes of section 235-55, each resident shareholder shall be considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S corporation to a state which does not measure the income of S corporation shareholders by the income of the S corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) Each shareholder of an S corporation shall be allowed a credit against the tax imposed by section 235-51 in an amount equal to the shareholder's pro rata share of the tax credits described in sections 209E-10, 235-12, 235-71(c), 235-55.91, 235-110.6, 235-110.7, and 235-110.8. With the exception of the credit allowed by section 235-12, nonresident shareholders shall be allowed the credits allowed to resident shareholders which are earned by the S corporation in this State. The credit allowed by section 235-12 shall be allowed to nonresident shareholders to the extent the credit is earned by virtue of property purchased and placed in service in this State. [L 1990, c 16, pt of §1; am L 1992, c 105, §1]

[§235-130] LIFO recapture. If an S corporation is subject to last in first out (LIFO) recapture pursuant to section 1363 of the Internal Revenue Code, then:

(1) Any increase in the tax imposed by section 235-71 by reason of the inclusion of the LIFO recapture amount in its income shall be payable in four equal installments;
(2) The first installment shall be paid on or before the due date (determined without regard to extensions) for filing the return for the first taxable year for which the corporation was subject to the LIFO recapture;
(3) The three succeeding installments shall be paid on or before the due date (determined without regard to extensions) for filing the corporation's return for the three succeeding taxable years; and
(4) For purposes of computing interest on underpayments, the last three installments shall not be considered underpayments until after the payment due date specified above. [L 1990, c 16, pt of §1]